

MEMOIRS

OF AN

Unfortunate Young NOBLEMAN,

RETURN'D FROM A

Thirteen Years SLAVERY

IN

A M E R I C A:

WHERE HE HAD BEEN SENT

By the WICKED CONTRIVANCES

OF HIS

CRUEL UNCLE.

A STORY founded on Truth, and address'd
equally to the Head and Heart.

V O L. III.

Which completes the WORK, and is a KEY to
the other Two VOLUMES.

L O N D O N:

Printed for J. FREEMAN in *Fleet-Street*; and sold by the
Booksellers in Town and Country. MDCCXLVII.

MEMOIRS

OF AN

Unfortunate Young NOBLEMAN,

RETURN'D FROM A

Twelve Years EXILE

IN

A MEMOIR

WHERE HE HAD BEEN SENT

By the WICKED CONTRIVANCES

OF HIS

CRUEL UNCLE.

A STORY founded on Truth, and address'd
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VOL. II.

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the other Two Volumes.

LONDON:
B

Printed for J. Freeman in Fleet-Street; and sold by the
Booksellers in Town and Country. MDCCLXXV.

THE
C A S E
O F
JAMES ANNESLEY Esq;

Counsel for the Plaintiff.

Robert Marshall Esq; Second Serjeant.
Philip Tisdall Esq; Third Serjeant.
Philip Walsh Esq; one of His Majesty's Counsel at Law.
William Harward Esq;
Joseph Robbins Esq;
Ambrose Harding Esq;
Harry Smyth Esq;
John Fitz-Gibbon Esq;
John Forbes Esq;
Thomas Morgan Esq;
Jonathan Belcher Esq;
Robert Fitz-Gerrald Esq;
Thomas Lill Esq;

Counsel for the Defendant.

Anthony Malone Esq; Prime Serjeant.
St. George Caulfield Esq; Attorney-General.
Warden Flood Esq; Solicitor-General.
Eaton Stannard Esq; Recorder of *Dublin*, one of his Majesty's Counsel at Law.
John Smyth Esq; one of His Majesty's Counsel at Law.
Anthony Marlay Esq; one of His Majesty's Counsel at Law.
Richard Malone Esq;
Peter Daly Esq;
Ignatius Hufsey Esq;
Simon Bradstreet Esq;
Thomas Lehunte Esq;
Francis Blake Esq;
James Maddox Esq;
Thomas Houghton Esq;

The Court being sat, the *Jury* were called over, and answered to their Names; of whom the following *Twelve* were sworn to try the Issue joined between the Parties:

2 *The CASE of James Annesley Esq;*

Sir *Thomas Taylor* Bart.
 Right Hon. *William Gray-*
ham Esq;
Richard Wesley Esq;
Hercules Langford Rowley
 Esq;
Richard Gorges Esq;
John Preston Esq;

Nathaniel Preston Esq;
Charles Hamilton Esq;
Clotworthy Wade Esq;
Thomas Shaw Esq;
Gorges Lowther Esq;
Joseph Ashe Esq;

CAMPBELL CRAIG, Lessee of **JAMES ANNESLEY** Esq; Plaintiff.

The Right Honourable **RICHARD** Earl of **ANGLESEY** Defendant.

Michaelmas Term, in the 16th and 17th Years of
G E O R G E II.

In the Exchequer.

County of } **T**HE Plaintiff declares that *James*
 Meath, } *Annesley* Esq; on the first Day of
 to wit. } *May* 1742, at *Trim* in the County
 of *Meath* demised to the said *Campbell Craig* 30 Messu-
 ages, 30 Tofts, 50 Cottages, 2 Mills, 50 Gardens,
 800 Acres of arable Land, 300 Acres of Meadow, 600
 Acres of Pasture, 50 Acres of Furze and Heathy Ground,
 50 Acres of Moory Land, with the Appurtenances, in
Great Stramine otherwise *Strameen*, *Little Stramine* other-
 wise *Stameen*, *Little Donacarney*, *Shallon*, *Kilcarvan*
 otherwise *Kilsharvan*, *Cruffey*, *Annagor* otherwise *Anna-*
ger, and *Little Gaffney*, scituate, lying, and being in the
 County of *Meath* aforesaid: All which said Premises
 were formerly the Estate of the Right Honourable *James*
 Earl of *Anglesey*, deceased; and lately the Estate of the
 Right Honourable *Arthur* Earl of *Anglesey*, also deceased;
To hold the said demised Premises, with the Appurte-
 nances, to the said *Campbell Craig*, his Executors, Ad-
 ministrators, and Assigns from the first Day of *May* afore-
 said, for the Term of Twenty-one Years then next en-
 suing, fully to be compleated and ended.

The Plaintiff also declares upon two other several Demises made by his said Lessor of the same Premises, that is to say, one by the Name of the Right Honourable James Earl of Anglesey, and the other by the Name of the Right Honourable James Annesley, only Son and Heir of Arthur late Baron of Altham, deceased; otherwise the Right Honourable James Baron Altham of Altham. By virtue of which said several Demises, the said Campbell Craig, on the second Day of May aforesaid, in the Year of our Lord aforesaid, enter'd and was thereof possessed, until the aforesaid Richard Earl of Anglesey afterwards, on the 3d Day of May aforesaid, in the Year of our Lord aforesaid, with Force and Arms, and so forth, entered into the said demised Premises with the Appurtenances, and ejected, expelled and removed him the said Craig from his said Farm (his said Term not being then or since determined) and otherwise did unto him, against the Peace of our Lord the King, that now is, and to the Damage of the said Craig One Hundred Pound Sterling.

To this Declaration the Defendant pleaded the general Issue, *Not Guilty*.

Mr. Lill, of Council for the Plaintiff. My Lord we, shall call our Evidences, and prove the Plaintiff's Title, and then we hope you Gentlemen will find for the Plaintiff.

Mr. Serjeant Marshall. I am in this Case of Counsel with the Lessor of the Plaintiff, whose Title stands thus: The Lands in question were the Estate of Arthur, late Lord Altham, of which he died seized, and the Lessor of the Plaintiff is his only Son and Heir. My Lord, if this were a common Case, I should have rested here; but as the Course of Descent has been interrupted on a Supposition that Lord Altham died without Issue; and as this is a Matter of great Expectation, very extraordinary in its Nature and Circumstances, and may be much more so in its Consequences, so it will be incumbent on me particularly to point out to your Lordship, and to the Jury, the Time and Place when and where the Lessor of the

4 *The CASE of James Annesley Esq;*

Plaintiff was born; for on that important Birth this Cause must depend.

My Lord, in the Year 1706, *Arthur* late Lord *Altham* was married to *Mary Sheffield*, natural Daughter of *John Duke of Buckingham*. After the Marriage, Lord *Altham's* Affairs required his Attendance in this Kingdom, and in the Year 1709 he came over; but his Lady remained in *England* till the Year 1713, when she came into *Ireland*; and in the Year 1714, Lady *Altham* resided in the City of *Dublin* with Lord *Altham* her Husband, and proved with Child. When she had been some Months advanced in her *Pregnancy*, and at the latter End of the Year 1714, Lady *Altham* went to his Lordship's House at *Dunmaine*, in the County of *Wexford*, where it was publickly known in the Neighbourhood that Lady *Altham* was with Child, and the then *Dowager* Lady *Altham* (who was married to Mr. *Ogle*, one of the Commissioners of the Revenue in this Kingdom) made Lady *Altham* a Present of a very rich *Quilt* against her *Lying-in*: And it will appear to your Lordship and to the *Jury*, that Lady *Altham's* *Pregnancy* was so well known in the Country, that Interest was made by several Women to nurse this Child when it should be born, and that great Care was taken in examining the Milk of the several Women who did apply to be Nurses, and that one *Joan Landy* was approved of to be the Nurse. My Lord, in the beginning of the Year 1715, Lady *Altham* fell in Labour, and was delivered of the *Lessor* of the Plaintiff by Mrs. *Shiel*, a *Midwife* of Skill and Reputation, who then lived at *Ross*, about three Miles from *Dunmaine*; and it will appear to your Lordship, and to the *Jury*, that Lord *Altham* expressed great Satisfaction and Joy upon the Birth of this Son, that a *Bonfire* was made upon this happy Event, and Drink publickly given to the Neighbours and People who came in to testify their Joy upon such an Occasion. It will likewise appear to your Lordship, and to the *Jury*, that great Preparations were made for the *Christening* of this Son, and that about a Month after the Birth, the *Lessor* of the Plaintiff was christened at the late Lord *Altham's* House at *Dunmaine*, in the Parish of *Tynterne*, by
one

one Mr. Lloyd, who was his Lordship's Chaplain, and, at that time, Curate of Rofs, by the Christian Name of James, after the third Earl of Anglesey, from whom Lord Altham had received great Favours, and the Sponsors on that Occasion were Mr. Colclough, Mr. Cliff, and Mrs. Pigot. I mentioned to your Lordship before, that Joan Landy was appointed the Nurse; her Father's House was about a quarter of a Mile from Dunmain, where the Child continued for about a Month; and then the Nurse's Father's House being first made fit for the Reception of such a Child, he was carried to that Place with his Nurse: And it will appear to your Lordship, and to the Jury, that for the Conveniency of Lady Altham, and that she might visit this Child as often as she pleased, a Coach-road was made from the House of Dunmaine to the Nurse's Father's House. When the Child was about sixteen Months old he was weaned, and brought back to Lord Altham's House at Dunmaine, where one Joan Laffan was appointed his dry Nurse: And it will appear to your Lordship, and to the Jury, that while Lord and Lady Altham were united, the greatest Fondness was shewn to this Infant by both. My Lord, in February 1716, there were some very unhappy Differences between the late Lord Altham and his Lady, upon which they, by Agreement, separated; but Lady Altham, as was extremely natural, desired to have the Company of her Child, which Lord Altham, but with great Expressions of Regard and Tendernefs for the Child, refused; and it will appear to your Lordship, and to the Jury, that Lady Altham left her Son with the utmost Concern and Regret. After this unhappy Separation, Lord Altham forbid Lady Altham's Access to this Child, and directed that she should by no means see him, and that the Child should not be carried to visit her. The Lessor of the Plaintiff thus deprived of his Mother, continued at Dunmaine in the Care of Servants till the Year 1718, and in that Year Lord Altham removed his Family to Kenna in the County of Kildare, where he continued about two Years; and it will appear to your Lordship, and to the Jury, that the Lessor of the Plaintiff was educated there with the greatest Affection, and

6 *The CASE of James Annesley Esq;*

was constantly reputed and deemed to be Lord *Altham's* Son and Heir. My Lord, in the latter end of the Year 1719, or beginning of the Year 1720, Lord *Altham* removed to *Dublin*, and had a House in this Town for some Time, to which the *Lessor* of the *Plaintiff* was also brought; and it will appear to your Lordship, and to the *Jury*, that he was then cloathed in a very extraordinary manner, and was treated and esteem'd as the Son and Heir of the Lord *Altham*. My Lord, some time in the Year 1720, Lord *Altham* removed to a Place called *Carrickduffe*, in the County of *Carlow*; and it will appear to your Lordship, and to the *Jury*, that as the *Lessor* of the *Plaintiff* was then of Years capable of Instruction, so Lord *Altham* provided a *Tutor* for him in the House; and when afterwards Lord *Altham* sent the *Lessor* of the *Plaintiff* to a public School at *Bunclody* in the County of *Carlow*, that he was there attended as the Son of a Nobleman, and treated as such. My Lord, in the Year 1722 (it was a Year extremely fatal to my *Client*) Lord *Altham* began a criminal Correspondence with one Miss *Gregory*, and in the *Winter* of that Year, Lord *Altham* settled in *Dublin* with her, in a House in *Cross-Lane*; and it will appear to your Lordship, and to the *Jury*, that this Miss *Gregory*, before she had made her Interest in Lord *Altham* quite secure, behaved tolerable well to the *Lessor* of the *Plaintiff*, and the *Lessor* of the *Plaintiff* was brought to the House where Lord *Altham* resided with her, and was sent to a public School in this *City*, and was used with great Care and Tendernefs by his Father, and at School was deemed and taken to be the Son of Lord *Altham*. It will be necessary to mention to your Lordship and the *Jury* what became of Lady *Altham* after this Separation. She resided in the Town of *Ross* for about three Years, and her Affection for the *Lessor* of the *Plaintiff* was so strong, that, notwithstanding Lord *Altham's* Prohibition, she found means privately to see the Child, and always expressed the greatest Regard and Fondnefs for him, and complained much more severely of being deprived of the Comfort in her Child than the Loss of her Husband. In the
Year

Year 1720, or thereabouts, Lady *Altham* came to reside in *Dublin*, but, unhappily for this Lady; she had in her *Lying-in* contracted Disorders, which at last ended in a *Dead Palsy*, and not only took from her the Use of her Limbs, but also, in some measure, deprived her of her Memory and Senses; but notwithstanding, it will appear to your Lordship and to the *Jury*, that, during the time she continued in this Kingdom, she kept a secret Correspondence with this Family, relative only to this Child. In the Year 1723, Lady *Altham* was carried from this Kingdom to *London* in a very languishing Condition, and there, during the Remainder of her Life, lived upon the Bounty of some Persons who had Charity enough to support her. My Lord, from this languishing Condition of Lady *Altham*, Miss *Gregory*, who had gained a prodigious Influence over Lord *Altham* (who will appear to your Lordship to have been a very weak Man) had hopes from him of every thing in his Power, expected to be Lady *Altham*, and had assumed the Title even in the Life-time of Lady *Altham*; and therefore considered the *Lessor* of the *Plaintiff* as the greatest Bar to her Hopes, in case she should have Issue by this Lord, and thereupon grew very harsh and severe to the *Lessor* of the *Plaintiff*; she raised Doubts in the Lord *Altham* that, tho' this was the Son of the Lady *Altham*, it might not be the Son of his Lordship, that so she might take off that paternal Affection from the *Lessor* of the *Plaintiff*, which he had always shewn to him before; and, my Lord, she gained such an Influence at last upon this unhappy Lord, that she prevailed on him to remove the *Lessor* of the *Plaintiff* out of his House; and in the Year 1724, the *Lessor* of the *Plaintiff* was sent by Lord *Altham* to one *Cooper's* in *Shipstreet*, in this Town. But the Heart of Lord *Altham* was not at this time quite estranged from his Son, for he gave Directions there that the *Lessor* of the *Plaintiff* should be taken great Care of, that he should be put to School; and it will appear to your Lordship and to the *Jury*, that he was put to School at one *Dunn's* in *Warburgh-street*, in this Town, and that Lord *Altham* came privately sometimes to see him there. My Lord,

it will appear to your Lordship, and to the *Jury*, that about this time the Necessities of the late Lord *Altham*, were so extremely great, that he looked out to raise Money by all manner of ways and means; and Lord *Altham* being advised, that if the *Lessor* of the *Plaintiff* were out of the Way, large Sums might be raised by the Sale of Reversions, in Conjunction with the Remainderman in *Tail*; and this Scheme being agreeable to the Inclinations of Miss *Gregory*, who was willing to get rid of the *Lessor* of the *Plaintiff* at any rate, it was determined that this great Obstacle to Lord *Altham*'s Desire of raising Money should be removed; and to that End the *Lessor* of the *Plaintiff* was sent to the House of one *Cavanagh*, with Directions to be kept quite private, so as it should not be known where he was, 'What farther was design'd against him I can't say; but it will appear to your Lordship, and to the *Jury*, that tho' the *Lessor* of the *Plaintiff* was at this time a very young Lad, yet he was a little too sprightly to be confined in that manner; he found means to make his Escape from thence, and being denied Admittance into his Father's House, he roved about from Place to Place (as will be more particularly given an Account of to your Lordship and to the *Jury* by the Witnesses) for the Space of two Years before the Death of the late Lord *Altham*, his Father, which happened on the 16th of *November* 1727. But during all that time he was taken care of by several Persons of extreme good Credit, and considered as the Lord *Altham*'s Son and Heir. Upon the Death of the late Lord *Altham*, in the Year 1727, the *Lessor* of the *Plantiff* was extremely young; he was by the Mother's Side destitute of all Friends whatsoever in this Kingdom, and the now *Defendant* the Earl of *Anglesey* (I must take the Liberty now of mentioning him) he, my Lord, upon the Death of the Lord *Altham*, claimed the Title of Lord *Altham*, as Brother and Heir to the deceased Lord, upon a Supposition that the late Lord died without Issue Male. My Lord, it will appear to your Lordship, and to the *Jury*, that many People who had known the *Lessor* of the *Plaintiff* for several Years before his Father's Death, appeared to be greatly surprized that the

the *Defendant* assumed the Title of Lord *Altham*, in regard that they believed the *Lessor* of the *Plaintiff* to be the Son and Heir of the Lord *Altham*; and there were Murmurings among the Servants, and a great many People who were acquainted with the *Lessor* of the *Plaintiff* on that account. It will appear to your Lordship and to the *Jury*, that in order to remove every Obstacle out of the way of the *Defendant*, and to take from the *Lessor* of the *Plaintiff* all Possibility of asserting his Right and claiming the Title, an Attempt was made very early after the Death of the late Lord *Altham*; an Attempt was made, I say, to *kidnap* the *Lessor* of the *Plaintiff*; and it will appear that the first Attempt was in vain; a second Attempts of this kind was made, and likewise defeated; but the third Attempt was more successful, and in about four Months after the Death of the late Lord *Altham*, the *Lessor* of the *Plaintiff* was sent into *America*, and there sold for a *common Slave*. I, My Lord, have not taken upon me to mention by whom those several Attempts were made, it will much more properly come out of the Mouths of the Witnesses; and when they shall speak it here upon the Table, every body will judge with what View and Design such a wicked Attempt could be made. My Lord, the *Lessor* of the *Plaintiff* while he was in *Slavery*, suffered many and various Hardships, as every body in those unhappy Circumstances does, and did make an Attempt to regain his Liberty; but being retaken, he suffered according to the Law of that Country, and continued about 13 Years in *Slavery*: But it will appear to your Lordship, and to the *Jury*, that even in that miserable Condition, when he had an opportunity of relating his Misfortunes to any body that had Compassion of them, he did mention the Unhappiness of his Case, and by what means he was reduced to such Circumstances. It will appear to your Lordship and to the *Jury*, in what manner the *Plaintiff* was brought by the Care and Bounty of Admiral *Vernon* into the Kingdom of *Great Britain*. There an unhappy Misfortune detained him for some time; he happened, by an accidental Shot to kill a Man, near *London*, for which he was indicted, and stood his

Trial: How that Prosecution was carried on, or for what purpose, I shall not take upon me to say, though it will have its weight in the Case; but it was necessary to mention this Circumstance, to shew that, when we were at liberty of coming into this Kingdom, and prosecuting our Right, we did it as recently as was in our power. When these Facts are laid before your Lordship and the Jury, we of Counsel for the *Lessor* of the *Plaintiff*, do apprehend there is such a connection in every one of them, that the Force of Truth will prevail, and that your Lordship will direct the Jury to find a *Verdict* for the *Lessor* of the *Plaintiff*.

Mr. Serjeant *Tisdall*. My Lord, Mr. Serjeant *Marshall* has so fully stated the Case of the *Lessor* of the *Plaintiff*, that I have no further Facts to mention, unless the Gentlemen on the other Side should require of us to prove the Title of the late Lord *Altham* to the Lands in question; if they do, we are ready to enter into it, and to shew that by the Will of *James* Earl of *Anglesey*, a Remainder of the Lands in the Declaration was limited to the *Lessor* of the *Plaintiff*, after the Death of his Father.

Mr. *Lebunte*, of Counsel for the Defendant. My Lord, I hope they will read the Remainders in the Will of *James* Earl of *Anglesey*, and the Codicils; whereby it will appear that the next Remainder of the Lands in question, after Failure of Issue of *Arthur* late Lord *Altham*, was limited to *Arthur* Earl of *Anglesey*, and not to the present *Defendant*, who was Brother to the late Lord *Altham*.

Mr. Serjeant *Marshall*. We admit that the late Lord *Altham* was Tenant for Life of the Lands in the County of *Meath*, and that *Arthur* late Earl of *Anglesey* had a Remainder before the present *Defendant*, and did enjoy it accordingly.

Mr. Serjeant *Tisdall*. My Lord, the *Legitimacy* of the *Lessor* of the *Plaintiff* is the material Point.

Mr. Recorder, for the Defendant. My Lord, the *Lessor* of the *Plaintiff* insists that he is the *Legitimate* Son of the late Lord *Altham*; if this be proved, there will be no necessity to read the Wills and Codicils: For we admit, that if *Arthur* Lord *Altham* left a Son, the present Earl of *Anglesey* has no right to the Lands in question.

Mr.

Mr. Serjeant *Marshall*. My Lord, there is one Point further to be admitted, which is, that the late Lord *Altham* intermarried in the Year 1706 with *Mary Sheffield*, Natural Daughter of the Duke of *Buckingham*, (which was admitted.) My Lord, we have been so happy as to be able not only to trace the Lessor of the Plaintiff from his Birth, but to shew some preceding Circumstances, rendering it highly probable; with which we shall begin, by laying before your Lordship and the *Jury*, that immediately after Lady *Altham's* coming into this Country she proved with Child, that she miscarried at *Dunmaine* of that Child, that she proved *pregnant* a second time, and was delivered of the *Lessor* of the *Plaintiff*.

Lord Chief Baron *Bowes*. *Gentlemen*, From the Evidence as opened, I see this is like to prove a Trial of Length as well as Expectation; and I think it is to the Honour of your Country, as well as for the Advantage of the Parties concerned, that Men of your Rank and known Probity attend the Trial of this Issue: But I fear it will not be in the power of the *Court* to take the Evidence with such Exactness as to give you the usual Assistance, by summing of it up at the End of the Trial. I must therefore request you, *Gentlemen*, to take Notes, as we proceed.

Mr. ATTORNEY GENERAL opens the Defendant's Evidence.

May it please your Lordship, and you Gentlemen of the Jury;

I Am Council for the *Defendant*, the Earl of *Anglesey*. You have heard a great deal of Evidence carried on for several Days, entirely taken up in the Examination of Witnesses on the Part of the *Plaintiff*.

It is necessary before I mention the Nature of our Proofs, to take Notice of the Method observed in producing the Evidence that has been already given, in order to attend the *Gentlemen* of the other Side in the same Method.
Though

Though they were very sensible, that this Fact, if true, must admit of the clearest Proof in the Affirmative, yet, they were pleased to begin, as I thought at a considerable distance from the Point, and took up much Time in examining Witnesses to shew, that it was probable, or at least not improbable, that my Lady *Altham* might have a Child, and gave Evidence such as it was, that my Lady *Altham* had been with Child, and had one or two *Miscarriages* before the pretended Birth of the Plaintiff.

They afterwards came more directly to the Question, and call'd Witness to prove the *actual Birth* of the Plaintiff; that it was at *Dunmaine* in the County of *Wexford*, in *April* or *May* 1715, (though one of their Witnesses of the best Appearance swore it to be in *September* 1715, and gave very particular Reasons for it) that there were great Rejoicings, a Public *Christening*, who the *Sponsors* were, the Nursing, and bringing home again of the Child, when Nurs'd, to the House of *Dunmaine*, and his Stay there with my Lord his Father, 'till above three Year old; this seems to me a Material, and indeed the most material Part of the Case; the *Jury* will therefore recollect the Inconsistencies and Contradictions of the Witnesses to these Facts, and judge of the Truth and Probability of the Evidence, by comparing the Nature of the Facts testified with the Witnesses produced to prove them, how likely, how possible, that such Persons as these, and these alone, should be able to prove a Fact of this Nature.

They proceed afterwards to give an Account of this Child in the several Places where my Lord *Altham* had resided after his Separation from my Lady; at *Kinna*, at *Carrickduffe*, and in *Dublin* in the several Places where he lodg'd there, and I think one of the Witnesses produced, late last Night, gave some Account, of him during my Lord's Residence at *Inchicore*: Whether this Evidence has Substance and Strength in it, or does not rather consist of loose Expressions, and the private Apprehensions of People, who knew but very little of the Family, is a Matter that will be observed upon by those Gentlemen, whose Province it is.

It was judged necessary, in the next Place, to shew, how this unfortunate, unoffending Child came to be forsaken and quite neglected by my Lord his Father; for they were sensible it would be proved, that my Lord consider'd him only as his *Bastard*, and even doubted, whether he was justly laid to his Door; you remember what Sort of Witnesses were called to give this Account, and what the Proof was. It is not my Business to make Observations.

I cannot but think the Evidence that ensued, was produced, and judged to be necessary from a Consciousness, that all their former Proofs were in themselves insufficient to establish this Fact; for after positive Swearing, and so much of it, what Occasion could there be to enter into Evidence that at most could induce but a Presumption. But this Evidence was, it seems, withal very proper to captivate, and therefore it was they called Witnesses to prove, that the *Defendant*, the Earl, did (not in any Hurry, but about three Weeks after his Brother's Death) employ some *Bailiffs* to seize this Boy, then Public in Town, and at Noon-Day to carry him by Force on Ship-board, in order to be transported, and that my Lord himself assisted in it. But you Gentlemen, will consider of the whole Proof as to this Transaction, and judge, whether it does not very plainly contradict, and refute itself, and shew, that this Person did of himself desire, and in the usual regular Way procure an Opportunity of going abroad without the least Interposition on the Part of the Earl. They then called a single Witness to shew my Lord was so sensible of the *Plaintiff's* Right; for this is the Turn they give it, that taking Advantage of a Misfortune that happened to befall him, his killing a Man by meer Accident, the Earl had him indicted and prosecuted for that Fact in order to have him capitally convicted, and so to put him out of the Way; and to conclude all with a finishing Stroke, this same Witness tells you, that the Earl confessed the Estate and Honours, and all were the *Plaintiff's* Right, and that he had a full Purpose to strike up a Bargain with him. If the Earl did at all interpose in this Prosecution, it will be shewn to you in proper Time, that the Inference drawn from such a Piece of Misconduct

Misconduct is by no means just; and we shall insist, that the Witness being intirely unsupported as to this Fact, had, of his own shewing, too great a Share in the Transaction, to be capable or deserving of Credit, as to this, or any other Matter of Fact.

This then, in a few Words, is the Scope and general Tendency of their Evidence; but how these Circumstances and Facts have been proved, by whom, with what Circumstances of Probability, and how just their Conclusions, are Matters that might well deserve the Consideration of the *Jury*, though no Evidence was to be offer'd on our Part, by comparing it with what might be expected, and must have been in their Power, if the Fact really was, as they would now have it thought to be.

We apprehend it will be material to our Defence, before we enter into other Proofs, to state to your Lordship and the *Jury* the Pedigree of this Family, shortly to open somewhat of the Settlements in the Family, their Prospects and Expectations, as well as the Circumstances of the Fortune in Possession at the Time of this *supposed Birth*; which will shew that a *Legitimate* Son of my Lord *Altham* (supposing there was a Desire to conceal it, which is not pretended) must have been a Matter of such Notoriety, as that the Proof of it at this Day could not possibly admit of the least Difficulty.

Arthur, the first Earl of *Anglesey*, had a considerable Family Estate, and upon the Settlement of the *Kingdom* at the Time of the *Restoration* made great Additions to it; his Credit at *Court*, and the Condition of the Times, gave him, as it did to many others, an Opportunity so to do: This Estate, taken together, does, as I am informed, far exceed any other now in the *Kingdom*: This Earl, *Arthur*, had Issue five Sons, *James*, *Altham*, afterwards created Lord *Altham*, *Richard*, *Arthur* and *Charles*,

On the Marriage of his eldest Son *James*, with a Lady of the *Rutland* Family, he settled the greatest Part of his Estate in the usual Manner, with Limitations over to his other Sons, and their Issue, successively, in *Tail Mail*, and soon after dy'd.

James, his eldest Son, also dy'd, leaving Issue of this Marriage, three Sons, James, John and Arthur.

Altham, the second Son of Arthur the first Earl, died without Issue, and his Honour devolved

Upon Richard the third Son; and this Richard Lord Altham had Issue, Arthur, late Lord Altham, and Richard, the present Earl of Anglesey.

Arthur, the fourth Son of the first Earl Arthur, died without Issue; and

Charles, the fifth Son, died, leaving Issue Mr. Charles Annesley, whom we all know.

My Lord, James, the eldest Son of Earl James, and Grandson to Earl Arthur, being in Possession of the Honours and Estate of the Family, he levied Fines, and suffer'd Recoveries of a great Part of this Estate, and in the Year 1701 made several Wills and Codicils disposing of it. By the first of these Wills dated May 14, 1701, after the Limitations to his Brothers, on Default of Issue Male in them, he devised his Estate to his Uncle Richard, Lord Altham, the Defendant's Father, and the Heirs Male of his Body, and in Default of such Issue, to his Uncle Charles Annesley, and the Heirs Male of his Body. On the 9th of December following, he made another Will, and limited the Estate in the same Manner; after recollecting that his Uncle Richard, Lord Altham, died some little Time before, he apprehended it would be wrong to let his Name stand in his Will, and therefore in the Will of December drew a Line a-cross his Name, and instead of Richard, wrote over it Arthur, and then the Limitation stood to Arthur, Lord Altham, and the Heirs Male of his Body; by which Alteration Richard, the younger Brother, the now Defendant, stood excluded from the Succession. After this he made several Codicils, which I have not read, but by some of them, the Will of the 14th of May is recited and established, by others, the alter'd Will that was in December; but by the last of these Codicils, the Will of May 14, 1701, is as we apprehend clearly set up and established. This we shall shew, if not admitted, from the Wills and Codicils that are now on the Table.

Soon

Soon after this, Earl *James* died without Issue Male; his Brother *John* also died without Issue Male, and *Arthur* the youngest Brother succeeded to the Honours and Estate. From this Confusion in these *Wills* and *Codicils* it remained a Matter of great Doubt, if the late Earl *Arthur*, and the late Lord *Altham*, should both die without Issue Male, of which there was no Prospect, who should succeed to the Estate, whether the present Earl under the *first Will* of *May* 1701, or Mr. *Charles Annesley*, under the *alter'd Will* in *December* 1701; but the general Opinion was, and it was the Apprehension of the late Earl himself, that the present Earl stood excluded. A Son of the late Lord *Altham* would have made this Question unnecessary, for clearly he must have succeeded to these great Honours, and to this vast Estate. Such a Son and such a Birth, must therefore be an Event, as of great Consequence, so of great Notoriety; how could it be unknown, or known only to such as you have seen, in a Country so peopled, and, as I may say, in the midst of their own Estates.

But it will appear further, that the late Lord *Altham* was possessed himself of an Estate of about 1200*l.* a Year; the Town of *New Ross* in the Neighbourhood of *Dummaine* was Part of it, this Estate on the Failure of Issue Male in him was to go, not to his Brother the *Defendant*, but to the late Lord *Anglesey*. It will appear, that this Estate on the Death of Lord *Altham*, was enter'd upon and enjoy'd by the late Earl of *Anglesey*, until his Death.

Is it possible then there could be such a Son of Lord *Altham*, and the late Earl know nothing of it? Could he be such a Stranger to his own Family? Nay, though a Stranger in other Respects, the Lord *Altham*, and his Family Affairs, made too much Noise in the World to suppose it possible. There is no Pretence, that the late Earl was concerned in any iniquitous Scheme. If he knew of this Child, can it be supposed he would do him such an Injury? In Policy, if from no better Principle, sure he would have more Regard to his own Character.

My Lord, we shall shew it further in Proof, that the late Lord *Altham*, for particuilar Reasons, was desirous to have a Son, and would very greatly have found his Ac-

count in it, being in Remainder to the *Anglesey* Estate; as I said, often in Distress for Money, one Method of raising it was by the Sales of *Reversions* of Parts of this Estate; the Validity of these Sales depended on his surviving the late Earl *Arthur*. Now upon his advising with Council, touching these intended Sales, we shall prove he was advised and informed, that these Sales, as Matters stood, could produce but little Money, because the Title depended on the Contingency of his surviving the Earl, who was judged the better Life of the two, as it really fell out. But if he had a Son, that something worth while might be expected, because then by levying a *Fine*, the Estate would have stood assured to the Purchaser so long as there was Issue Male of his Body. This we shall prove by a Gentleman of undoubted Veracity and Reputation.

The Gentlemen on the other Side, think they have great Advantage against us, that the Proof on our Part is in the Negative; the Observation is partly just, that it is much more easy to prove the Affirmative in any Question of Fact; but they might carry it a little further, for as such Proof is more easy, so it ought to be in Proportion more clear and satisfactory: But be that as it will, we apprehend this is a Fact of such a Nature as admits of Proof in the Negative, and that such as may produce a full and clear Conviction; for this Purpose therefore, We shall now proceed to give an Account of my Lady *Altham* from the Time of her Arrival in this *Kingdom* in the Year 1713, by a Person who attended her Ladyship into the *Kingdom*, continued in her Service as a Woman to her all the Time of her being here, I think was never a Week together from her, went back with her again, and continued in the same Service and Attendance, till my Lady's Death. This Witness will prove that my Lady *Altham* was never with Child, never had any Miscarriage that she knows of; and that it should be, and she not know of it, is, I think, next to impossible. She will prove my Lady's Expressions of Concern upon this Head, that she had not the good Fortune to bring a Child to this Family: She will prove to you that my Lady lived some Years after her Lord, had an Account of his Death, of
the

the late Lord *Anglesey's* going into Possession of her Lord's Estate, and the present Earl's assuming the Title of *Altham*; that she had at this time Access to the Dutches of *Buckingham*, and other Persons of Quality in *England* and was in a lonely, disconsolate Way; but as to her ever having had a Son, complaining of any Injury done to this Son, and that not one Syllable to this Purpose was heard to proceed from her.

We shall produce also one *Thomas Rolph*, who was *Butler* to my Lord, and lived with him at the time of this pretended Birth; my Lord's Gentleman likewise, and some other Servants of the better Sort, who were in the Family and Service at this time; and they all agree in this, that my Lady was not with Child; that there was no Miscarriage or Birth that they ever knew or heard of. And this, we apprehend, will be far better Evidence than that of *Murphy*, *Laffan*, or *Doyle*, because these People testify what was properly within their Sphere, and must know, if there was such a Fact.

We shall produce Persons of the best Condition in the Neighbourhood in *Dunmaine*, between whom and my Lord *Altham* there pass'd a constant Intercourse of Visits, and with some of them you will find the Intimacy was very great: They have mentioned Mrs. *Lambert* as a Person extremely intimate with my Lady; we shall produce her, and her Husband Mr. *Aaron Lambert*; he had sent *Dunmaine* to my Lord, lived himself at *Rose*; his Dealing, as well as Neighbourhood and Acquaintance, gave him and his Lady great Opportunities of knowing more of this Family than many others.

We will call Colonel *Palliser*, and also his Son, who was unfortunately made the Pretence of the Separation, and from him you will have a full Account of that Matter, and he will not only swear it; but shew you that what *Laffan* has testified is false.

That I may not mention all as to this Point, we shall call in the last Place Mrs. *Giffard*, a Woman of an exemplary good Life and Character; she will not only prove, as others, that there was no Child that she ever heard of; but she will prove further, that there being some

me Pretender's Men to be tryed at the *Affizes* at *Wex-*
ford, which were held in the beginning of *April* 1715,
 and this being a Business of some Expectation, my Lord,
 my Lady, and several others went to that *Affizes*, that
 my Lady was at all Publick Places, and was in *Court* at
 the Tryals of those People: This was so near the time of
 the pretended Birth, 'tis plain her being with Child, if
 it, must be visible and conspicuous to all the World.
 This therefore will be proved by Mrs. *Giffard*, and she
 will be corroborated herein by many others.

We shall also lay before you the frequent Declarations
 and Expressions, not only of my Lady, but of my Lord
 also, upon this Head: They have likewise, on their Part,
 given some Evidence of this kind; you will compare to-
 gether the Witnesses and what they say; we apprehend
 there is little Stress to be laid on this Part of their Proof,
 testified at this Distance of Time, where the Omission or
 Addition of a single Word might invert the whole Sense.
 We think it strange that these Witnesses, if they knew
 and believed so much, neither said or did any thing in
 consequence of it; and we think this Conduct can only be
 accounted for by their not believing, their not laying any
 stress upon what they had heard; and when we have
 shewn all this, I can't but think, for my Part, that we
 might safely rest our Case here.

But we shall go a great deal further, and give an Ac-
 count of the *Plaintiff* from the Moment of his Birth.
 When my Lady returned to *Ireland*, my Lord was at
Dunmaine; he came to Town, they were reconciled,
 stay'd some time, and then they both went to *Dunmaine*.
 One *Joan Landy* was before, and at the time of my Lady's
 coming to *Dunmaine*, *Kitchen-Maid* there, and in a few
 Months she appear'd so big with Child that it came to
 my Lady's Knowledge, upon which she was turned off
 and went to her Father's, who lived on the Land of
Dunmaine, at a very little Distance from the House. As
 my Lord, as well as others, had it seems given Cause,
 so it was wisely resolved to make him the Father of this
 Child. We shall shew the *Birth*, the *Christening*, and
 manner of keeping this Child 'till the Separation of my
 Lady

Lady: We shall prove that on the Separation, the Child was suffer'd into the House, and the Schooling of it while my Lord lived at *Dunmaine*; that the Pretence that *Landy's* Child died, is false; that there was but this Child; that my Lord regarded it but little; that it was brought after him to *Kinnea*, *Carrickduffe* and *Dublin*, and as it grew up gain'd some Ground, but still treated consider'd and reputed as a *Bastard*, and no other. This we shall prove in those several Places, not by loose Expressions, but by those who knew my Lord and — Family well: We shall prove to you the Reputation concerning him when at those poor Schools that have been mentioned; we shall shew the Occasion of my Lord's Neglect of him; that he was untowardly, vicious and incorrigible; that he rambled down to *Ross*, my Lord's Estate, where he and his Mother were well known, and was treated and consider'd as my Lord's *Bastard* by *Landy*; — and shew him after in *Dublin*, for a great length of time, in a poor Condition, yet known and reputed by such as knew any thing at all of him to be my Lord's *Bastard*; that he himself pretended no other, and being asked about his Parents, mention'd not only my Lord as his Father, but *Landy* also as his Mother.

And we shall shew in the last Place, while he was thus neglected and in this Distress, that my Lady was in *Dublin*, knew of his Condition, and that her Dislike of him was such, that she could not endure to hear him named; and from Persons of undoubted Character, and with whom she lodged and dieted here, it will appear, that amidst all her Complaints of Wrongs and Injuries, there never was the least mention of any with respect to a Son or Child that she ever had. Her Silence upon this Head, at this time, and under her Circumstances, we apprehend to be great Evidence; but much more so after my Lord's Death, when she saw one assume the Estate, and another the Honours of the Family. My Lord, we apprehend their Evidence as to the *spiriting* away and the Testimony of Mrs. *Giffard*, when consider'd, is in Truth already answer'd; but if thought to be necessary, I doubt not but we shall give you full Satisfaction.

You observe they don't produce *Joan Landy*, tho' in the List of their Witnesses, and in their Power: We charge her to be the *Mother*, they say the *Wet-Nurse* only; can there be a stronger Inference than that which must of Necessity be drawn from the keeping back this Woman?

Gentlemen, I shall trouble you no more, but proceed to prove what I have now stated, and indeed a great deal more which has escaped my Memory; and when this is done, as we rest assured that this Cause will be tryed uninfluenced by any Considerations that have not a Tendency to prove the Matter in Issue, and that the Purchasers from, and Creditors of the Family, and those who have a Right to succeed to the Honours and Estate, will receive no Prejudice from Considerations that have not a Tendency to prove the Matter in Issue, and that the Purchasers from, and Creditors of the Family, and those who have a Right to succeed to the Honours and Estate, will receive no Prejudice from Considerations that do not properly relate to the Case, and certainly have no Relation to them; so we do not doubt but you will put an End to this strange Business by finding according to our Plea, that the Defendant is not of the Trespass and Ejectment in the Declaration mention'd.

N. B. Mr. Serjeant *Marshall*, of Council for Plaintiff, stated the Title of *Arthur Lord Altham*, from the Wills and Codicils of *James* the first Earl of *Anglesey*, to shew that *Arthur Lord Altham* was only Tenant for Life; the Council for the Defendant having insisted that he was Tenant in Tail under the said Wills and Codicils; upon which the Wills and Codicils were in Part read.—But the Court were pleased to interpose, and said, that this was a Question of Law that might require great Consideration, and was not necessary to be determined at this time; the only material Point being, what was the Opinion of Lord *Altham* concerning his Title; that is, whether at the Time mentioned by Colonel *Wall* in his Evidence, *Arthur Lord Altham* considered himself as Tenant in Tail, or only Tenant for Life of the *Anglesey* Estate; for according to his Opinion concerning his Title in

in that Estate, it was his Interest to *own* or *disown* him having a *Lawful* Son.

The Evidence on both Sides being closed, the Court adjourned to *Thursday* Morning at half an Hour past eight that the Lawyers, who were to observe on the Evidence might have Time to prepare themselves.

Thursday, November 24th.

The Court being met according to Adjournment, the Council for the Defendant proceeded to speak to the Cause.

Mr. Prime Serjeant MALONE.

May it please your *Lordship* and you *Gentlemen of the Jury*

My Lord, This Case has already taken up so much of your *Lordship's* Time, that I shall only observe upon such Part of the Evidence given on both Sides, as seems to me to be most material, and from thence shall endeavour to satisfy the *Gentlemen of the Jury*, that a Verdict ought to be given for the Defendant. My Lord, the Plaintiff's Title depends upon a single Matter of Fact, and that is whether the *Lessor* of the *Plaintiff* be the *legitimate* Son of *Arthur* late Lord *Altham* or not; and though I must confess, the *Gentlemen* concerned for the Plaintiff, have dressed out his Case with a great deal of Art, and much Industry has been used to gain Credit to this Fiction, yet I am persuaded when the Ornaments and Disguises are taken off, *Mr. Annesley* will appear what he originally and until of late was known and allowed to be, the *natural* and not the *legitimate* Son of *Lord Altham*. In order, my Lord, to consider this Case in it's true Light, it will be necessary to state the Pedigree, and to take Notice of the Condition and Circumstances of this noble Family for some Years preceding the Time of this supposed Birth. The *Gentlemen* concerned for the Plaintiff have mentioned, and it is on both Sides agreed, that the Lands in Question were formerly the Estate of *Arthur* the first Earl of *Anglesey*, that he had five Sons, *James* Lord *Annesley* his eldest Son, *Altham* Lord *Altham* his second, *Richard* afterwards Lord *Altham* his Third, *Arthur* his fourth, and *Charles* his fifth Son. That upon the Marriage of *James* Lord *Annesley* some Time in the Year 1669, with a Daughter of the *Rutland* Family, a Settlement was made

by *Arthur* the first Earl of *Anglesey*, by which the whole Family Estate was settled upon *James* Lord *Annesley* for Life, Remainder to his first and every other Son in Tail-Male, Remainder to the Heirs Male of the Body of *Arthur* the first Earl of *Anglesey*. *James* Lord *Annesley* had Issue three Sons, *James*, *John* and *Arthur*, who were all successively Earls of *Anglesey*: *Altham* Lord *Altham* who was the second Son of the first Earl, died without Issue, and after his Death, *Richard*, who was the third Son, succeeded to that Title, and had Issue *Arthur* the late Lord *Altham* and the present Defendant. *Arthur* the fourth Son of the first Earl of *Anglesey* died without Issue. And *Charles* the fifth Son had Issue Mr. *Charles Annesley*, who is now living, and married to the Lady *Levinge*. This, as I apprehend, is the Pedigree of the several Branches of the Family, and it appears that all the Male Descendants of the first Earl were dead at the supposed Time of the Birth of the *Lessor* of the Plaintiff, except *Arthur* the last Earl of *Anglesey*, *Arthur* late Lord *Altham*, and the Defendant *Richard* now Earl of *Anglesey*. It is admitted, my Lord, that *James* Earl of *Anglesey*, the Son of Lord *James* levied a Fine and suffered a common Recovery of a considerable Part of the Estate, and afterwards, upon the fourteenth of *May*, in the Year 1701, made his Will, and thereby devised all his Estate in *Ireland*, of which he had levied Fines and suffered Recoveries, or had Power to dispose of, to my Lord *Haversham*, and other Trustees, in Trust for the Payment of his Debts, and after the Discharge of those Debts, to the Use of his Brother *Arthur* for Life, Remainder to his first, and every other Son in Tail-Male, Remainder to his Uncle *Richard* Lord *Altham* for Life, Remainder to his first and every other Son in Tail-Male, Remainder to his Uncle *Charles* for Life, Remainder to his first and every other Son in Tail-Mail. Soon after the making of this Will, as I take it upon my Memory, some Time in November 1701, *Richard* Lord *Altham* died, and on the 23d of November 1701, *James* Earl of *Anglesey* annexed a Codicil to this Will, whereby he limited a particular Part of the Estate to *Arthur* Lord *Altham*, the eldest Son
of

of his Uncle *Richard* for Life, with Remainder to his first and every other Son in Tail-Male. And by the same Codicil, as I take it, an immediate Remainder after the Death of his Brother *Arthur*, and Failure of Issue Male of his Body, was limited of the rest to *Arthur Lord Altham* for Life, Remainder to his first and every other Son in Tail-Male, with Remainder to his Uncle *Charles* for Life, Remainder to his first and every other Son in Tail-Male, and no Manner of Notice is taken in that Codicil of the present Defendant. Subsequent, my Lord, to this, upon the ninth of *December 1701*, Earl *James* made another Will, and by this Remainder, after Failure of Issue Male of his Brother *Arthur*, is immediately limited to his Cousin *Arthur Lord Altham*, and for want of Issue Male in him, an immediate Remainder to his Uncle *Charles*, and no Notice neither is taken in this Will of the present Defendant, but by this Will the Limitations in the Will of *May 14*, and set up; and on the same Day Earl *James* made another Codicil, which is exactly in the Words of the Codicil of *Nov. 23*, and after this, on *Dec. 10, 1701*, there are two other Codicils made by Earl *James*; one of them annexed to each of the former Wills and Codicils. And upon *Jan. 2, 1701*, there are two further Codicils made and annexed to those Wills; so that there were six Wills and two Codicils subsisting at the Time of the Death of *James Earl of Anglesey*. From all this it is apparent, that *Arthur Lord Altham* was entitled to an immediate Estate Tail in Possession from and immediately after the Death of *Arthur late Earl of Anglesey*, and Failure of Issue Male of his Body and all his great Estate, except such Part thereof as by the first Codicil was limited to *Arthur Lord Altham* for Life; and as *Arthur Lord Altham* died without Issue, before the Time of the Death of the late Earl, the present Defendant as second Son of the Body of *Richard Lord Altham* became intitled, by virtue of the same Wills and Codicils, to an immediate Remainder in the Tail of the whole *Anglesey Estate*; my Lord, Earl *James* died without Issue Male some time after the making of these Wills and Codicils, either in the Year *1701*, or *1702*; and upon his Death Earl *John* succeeded

to the Title, and to such Part of the Family-Estate under the Settlement in 1669, as his Brother *James* had not suffered Recoveries of. Earl *John* died without Issue about September in the Year 1710, he was wholly passed by, by the Will of his Brother *James*, but after his Death without Issue, Earl *Arthur* by the Will of Earl *James*, and by a Deed or Will made by Earl *John*, and under the Settlement of 1669, became intitled to the Possession of the whole Estate, except the Part limited by Earl *James* to *Arthur* Lord *Altham*; Earl *Arthur* being thus entitled to those great Estates and Honours, and having a disposing Power over so much thereof as came to him from Earl *John*, and never having had any Issue, Lord *Altham* was, without Question, his next-Male Relation of his Name and Family, and not only inheritable to the Honours and Titles he was possessed of, but also the Person in Remainder to, by much the greatest Part of this Estate: And from hence it must be reasonably concluded, that the having of an Heir; the Birth of a Son who would in all Probability succeed to these great Honours and Estate, must be an Event of great Consequence, and in its own Nature must be notorious, not only in the Family, and in that particular Part of the Country where it happen'd, but indeed over the whole Kingdom.

I could wish the Gentlemen of the *Jury* would consider, that suppose *Arthur* Earl of *Anglesey* had had a Son; whether such a material Circumstance could be concealed, or so little Notice taken of or observed by the World, as that the least Doubt could remain at this Day touching such a Fact, in which such a Number of Persons, of all Ranks, must be concerned, and which was a Matter, that even every News-Paper, published at that Time both in *England* and *Ireland*, must have made Mention of; a Matter, that every Gentleman; every Neighbour in the whole Country, every Tenant of this great Estate, and every Relation of this great Family should not be apprized of, and well able to attest. It is impossible, my Lord, that any Doubt could remain touching the Birth of such a Child, had there been any Reallity or Truth in it; the Birth of a *legitimate* Son of Lord *Altham* would at the Time of the supposed Birth of the *Lessor* of the Plain-

tiff have been an Event, considering the Age my Lord *Anglesey* was then of, and his being for many Years married, and having no Issue, which must have equally affected all those Persons I have already mentioned, and consequently must have been equally notorious; as such, Lord *Altham* must have been considered as the presumptive Heir of those great Honours, and so large and extensive an Estate, and indeed in the same View as the Son of Lord *Anglesey* himself; how it can be imagined, in the ordinary and natural Course of Things, that my Lord *Altham* could have a *legitimate* Son born, and such a Birth not publickly and universally known, and acknowledged by all Persons concerned, related to, and interested in the Estate and Affairs of the Family is most surprizing; such a Birth as the *Lessor* of the Plaintiff pretends to, and which appears by the best Part of the Evidence given on the Trial, was but lately thought of, if it had been real, could never admit of any Doubt, nor would or could there be any such Necessity as the *Lessor* of the Plaintiff is put to, in this Case, for raking amongst, and making use of, the Evidence of many of the lowest and most abject Part of the People to make out such a Fact. How is it possible, my Lord, to conceive that the numerous Relations of this noble Family, many of whom were interested in the Succession of those Honours and Estates, should have been unacquainted with this Event? I say, my Lord, with great Submission, it is impossible for a rational Man to conceive that a Transaction of this Kind should be an absolute Secret to them, to their Friends, Neighbours, and Tenants, and indeed a Secret to all the World, except a few inferior Persons, who now appear to give point blank Proof of it, against Circumstances which induce the utter Improbability of such a Story: There is another Circumstance, in my Apprehension, of great Weight in this Case, that should make the Birth of this Child, in Case he had been the *legitimate* Son of Lord *Altham*, an Object still more of the Notice of Mankind in general, and of this great Family in particular, which is, that my Lord and Lady *Altham* were once separated before their Meeting in the Year one thousand seven hundred and thirteen; I

think

think the Marriage is said to be in one thousand seven hundred and six, and that my Lord, upon some Disagreement, quitted his Wife, and came into *Ireland*, in one thousand seven hundred and nine. And it appears, there was some Difficulty to bring about a Reconciliation, which it seems was done in one thousand seven hundred and thirteen: Now, in my Apprehension, this Circumstance of a Reconciliation, especially in such a noble Family as this, would naturally call upon the Attention of People in general, to inquire into the Success of this Reconciliation, but would much more strongly engage the Attention of the Family itself, and of all Persons having any Relation to it, and therefore, for these Reasons, unless it does appear with the utmost Clearness, that there was a Son born of the Body of my Lady *Altham*, beyond a Possibility of Doubt, that alone, if there had been nothing else in the Case, is a sufficient Foundation for the *Jury* to find against the *Plaintiff*; this then being the Situation, and those the Circumstances of this Family, I shall now, with your Lordship's Favour, beg Leave to make some Observations on the Evidence given on the Part of the *Plaintiff*, to make out this Fact, which is in its Nature of so great Consequence and Importance; and, I think, when it is compared, and laid together, and duly considered, the best that can be said for it is, that it may perhaps have raised some Doubts in weak Minds; but on the other Hand, when the Proof given on the Part of the *Defendant* is weighed, and proper Consideration is had of it, by the Gentlemen of this *Jury*, no Kind of Doubt I think can remain, but that however careful and industrious the *Plaintiff* and those concerned for him have been to fish up Witnesses, and to lay Circumstances before the *Court*, rather to asperse and calumniate the *Defendant*, than any Way conducive to the Proof of the Fact singly in Question, yet they have failed in that alone which is the principal Foundation of this Claim. The Circumstances of the Favour shewn by Lord *Altham* to this Boy, if they were true, are no uncommon Thing to a natural or illegitimate Child; especially when a Man has no other; but the true Question is, Whether the *Lesser*

of the *Plaintiff* is a Child of Lord *Altham* born in *Wedlock*? And this is a Point that can't be proved, by any Favour or Kindness only, which Lord *Altham* shewed this Child at any particular Time, that alone being far from being a Mark of the *Legitimacy* of the Child.

The first Thing the *Plaintiff* set out with upon this Trial, was this Reconciliation between Lord and Lady *Altham*, and then, in order to give some Colour to the pretended Title now set up, it was necessary to introduce it with shewing that Lady *Altham* was a Woman likely to have Children, and he has furnished us with two Miscarriages and a Child, born all within a very short Period of Time after.

There were two Ladies produced, in order to shew the Time of the Reconciliation, Mrs. *Dorothy Briscoe* and her Sister Mrs. *Cole*; the Account they give your Lordship is, that my Lady *Altham* came to *Ireland* in the Year one thousand seven hundred and thirteen, and that she staid at her Father's House about six Weeks, and went to the Country before *Christmas*. There is a Point of Time during this Period in which the Witnesses on the Part of the *Defendant* disagree with them; and that is, that Mrs. *Cole* would have your Lordship understand, that they went to live at Mrs. *Vice's* in *Essex-street*, and from thence went to live in the Country. This of itself is a Circumstance of no Moment, for whether they went from *Vice's* or *Briscoe's*, in the Consequence of this Case, signifies nothing; but it was calculated, I presume, to weaken the Testimony of Mrs. *Heath*, from whom they differ in that particular; but in my Apprehension, my Lord, it can't possibly have that Effect.

Your Lordship will be pleased to observe, that Mrs. *Cole* says, that when she was at *Dunmaine* in the Spring following, she was either *twelve* or *thirteen* Years old; but in a subsequent Examination, she brought herself to *fifteen* or *sixteen*, but upon her first Examination she never carried her Age beyond *thirteen* at the Time of her being at *Dunmaine*; I take Notice of this, my Lord, because I think the Conclusion to be drawn from it is manifest, that a Child of the Age of *twelve*, cannot be supposed

posed to be a Person of so much Observation and Experience, as to remark and be able to give an Account of all the minute Circumstances attending an Affair of this Kind. Girls of such tender Years seldom take Notice of or understand what *Miscarriages* or *Abortions* are, and this Circumstance, in the Nature of it, is not such a one, as any reasonable Person can suppose should make an Impression on her Mind at such an Age; and as there could be no Reason assigned for recollecting a Matter of this Kind so exactly, and after such a Length of Time, so, she very prudently said when she came to be cross-examined, she thought it was so, but could not say it positively. — And if the Fact had been as she represents it, there must have been other Circumstances more worthy of the Observations of a Child than those she mention'd. It can hardly be supposed, where a Reconciliation of this Kind was had, and so much Complaisance was shewn to my Lord and Lady in Mr. *Briscoe's* House, that there should not be some of the ordinary Compliments paid, on my Lord's carrying his Lady to his Lodgings; and I think it can't be doubted, but as Mr. *Briscoe* the Father was the Instrument of this Reconciliation, those young Ladies must have been Part of the Company invited to accompany them; the going home with my Lord and Lady, the Manner of the Entertainment — The Company that attended them --- were Observations proper for a young Girl; and yet they remember nothing of this! They don't remember, that either of them even once saw them after till their coming to Town the Year following.

I own, that upon a second Examination, Mrs. *Cole* says, she believes they might have visited, but she had no Recollection of it: I say, my Lord, with Submission, that their Want of Memory in Circumstances proper and natural for them to recollect, and taking upon them the Remembrance of Things not usual for Girls to observe, shews plainly, that there are Witnesses brought here for the particular Purpose of swearing to this pretended Fact of a Miscarriage, which Mrs. *Cole* is so ready at, though she knows nothing else, and therefore not to be credited.

Give me Leave, my Lord, to mention the Reasons why I think it is impossible for Mrs. *Heath* to have forgot the going into Lodgings from Mr. *Briscoe's* before my Lord and Lady *Altham* went into the Country; Mrs. *Heath* was my Lady's *Woman*, she came with her from *England*, was never in this Kingdom before; continued her *Woman*, and, in a great Measure, her Friend, from the Time of their coming over here to the Hour of her Death, attended her in all her Distresses and Troubles, and return'd with her into *England*, where she all along continued in the same Station, and always about her Person; I think nobody can question, but the coming of Mrs. *Heath* with my Lady into *Ireland*, where she was an absolute Stranger, the Reconciliation, and the going down the first time to Lord *Altham's* House in the Country, and from whence they went, were such Circumstances, so fit for the Observation of this Woman, that it is hardly possible to conceive, if they had gone into Lodgings from Mr. *Briscoe's* before they left the Town, but that she must have remembered it; there was not above a Week's Time between the Reconciliation and their going into the Country; and how it can be imagined, that they would have removed from *Briscoe's* House into Lodgings for so short a Time, I can't see. Mrs. *Heath* swears positively, that the Thing was not so; and in my Opinion, her Evidence must clearly take away the whole Force of the Testimony of Mrs. *Cole* or her Sister, with Respect to the said Particulars.

The next Circumstance of Moment in this Case, is that of the pretended Miscarriage; this is introduced, I suppose, to give a Colour to the Birth of a Child, and the first Miscarriage, according to Mrs. *Cole's* Account, who is the single Witness to it, was some Time in *May*, *June*, or *July*, 1714; for the particular Time is no way fixed, but she says, that this Accident happened, as she recollects, about six Weeks after she was at *Dunmaine*: Now, my Lord, in my Apprehension, this also is a Piece of Evidence which she can receive no Credit in; it seems to me rather to be a *Dream* of this young Lady's, than any thing of Reality; she tells your Lord-

hip, that she was in Bed with her Mother, and that her Mother was waked out of her Sleep, and told by Mrs. Heath, that my Lady was ill, and says, she heard the next Morning, that my Lady had miscarried: Now the Circumstances of the awaking --- the Occasion of it --- the Person by whom awaked --- are Circumstances not probable for this young Lady to have any Recollection of? Why should it strike her Memory so very strongly? She was not the Person awaked, but it was her Mother, and considering her Age at that Time, and that a Lady's being ill was not an extraordinary Thing to hear mention'd, it could not, in the Nature of it, make such an Impression on her Mind as she now pretends; few Girls of 12 Years old, I believe, know what a Miscarriage is. But then how came the Word *Abortion*, which is a more uncommon Term, into the Mind of a Girl of her Age; I say it is a Phrase picked up, upon some late Conversation, and for the particular Purposes of being mention'd on this Trial; it is a mere fram'd Story, and can't, in common Sense or Reason, receive any other Interpretation; that nobody can rationally conceive, that ever her Mother would have talked to such a Child about a *Miscarriage* or *Abortion*, or that the Signs of any such should be shewn to her, or be let to lye in a *Bason*, in an open Room, for her to inspect; she was too young to be instructed in these *Mysteries*; and this Part of her Evidence is in itself so improbable, that no body can believe it. But, besides this, Mrs. Cole is the single Witness to this Point of the pretended Miscarriage, and is contradicted in it by the very Persons to whose Veracity she appeals, by Mrs. Heath and by Thomas Rolph; she in her Evidence appeals to them, she says they were then in the House, that it was a Thing known in the Family; but it is positively denied both by the one and the other; and by the concurrent Testimony of all the Witnesses on the Part of the *Defendant*, it is proved, that it never was known or understood, or believed in the Family, that there was a Miscarriage, or Birth of any Child, by Lady Altham, during the whole Time of their living or being at *Dunmaine*. But the Persons concern'd for the *Plain-*

tiff, in preparing for this Trial, and the Evidence to be given upon it, conscious to themselves that possibly one single Instance of a Lady's miscarrying might not be sufficient for their Purpose, have with great Art brought in a second Miscarriage to their Aid; and the Witness to prove this, is *Catharine M'Cormack*. In the first of these Miscarriages, they have relied upon the supposed Memory of a young Girl of the Age of about 12 or 13 Years; but in the second, they are forced to take up with one of the meanest Persons in a House where it is said my Lady lodged before they went to *Dunmaine*. This Woman goes directly against the Evidence of *Mrs. Cole* and *Mrs. Briscoe*; for by their Account, the Miscarriage at *Dunmaine* could not have been sooner than *April* or *May*, after my Lady left Town, and yet this *Catharine M'Cormack* swears my Lady came to Town in *May* or *June*, and miscarried in two Months after, at her Mistress's House; and then, in an Instant, she is big with Child before *Christmas*, and is brought to Bed in *April* or *May* following; this is the Course of this Testimony, and I appeal to any *Gentleman of the Jury*, if *Mrs. Cole* and *Catharine M'Cormack* can both be credited; but the Conclusion to be drawn from the Inconsistency of their Evidence is, that neither ought to be believed; because where it appears plainly, that Witnesses of this mean Rank have been dressed out, and must have been instructed to swear to Facts which cannot appear clearly to be true, it must throw an utter Discredit, not only upon these in particular, but on every other produced to make out this pretended Birth. This Fact, my Lord, which this Woman *Catharine M'Cormack*, swears so positively to, is founded, I suppose, on a circumstance which appeared on the Evidence of *Mrs. Heath*; *Catharine M'Cormack* says positively, that Lady *Altham* came to their House, meaning *Mr. Briscoe's*, in *May*, or *June*, 1714; that she miscarried in two Months after, she thinks in *August*; she says that *Mrs. Lawler*, a *Midwife*, was sent for, that my Lady was confined for a Fortnight, and attended by *Mrs. Lawler*; and though she does not say she was present, yet the Nature of her Evidence is
such

such, that in Fact it is swearing positively to the Miscarriage --- For she swears, that Mrs. *Heath* inform'd her of it the very next Morning; and she swears also, that my Lord went to the Window and called, or cried out, Mrs. *Lucas*, several Times; and she says, that she herself prevented the sending for Mrs. *Lucas*, and yet the next Day, one Mrs. *Lawler* is brought, and there is an Attendance of three Weeks by her. I must observe to your Lordship, that both Mrs. *Briscoe* and Mrs. *Cole* swear they saw my Lady in Town in *August 1714*, and yet they swear they know nothing of any other Miscarriage except that at *Dunmaine*; and that they knew nothing of my Lady's being with Child. Now, here is a Family, with whom there was a great Intimacy, and can it be imagined that my Lady could miscarry in *August 1714*, be confined to her Room for a Fortnight or three Weeks, constantly attended by a *Midwife*, and yet not one of the Family of the *Briscoes* know one Word of the Matter! I say it is impossible to be conceived to be true, it must be considered to be a Fact utterly false, and which probably has sprung out of the Quarrel which happened one Night between my Lord and Lady, mention'd by Mrs. *Heath*, when he made a great Noise, and threatened to send her out of the House, but would first send for Mrs. *Lucas* to know if she was with Child, — To the End, that if a Child should be born after he parted with her, he might be satisfied whether the Child was his or not; this then, as I apprehend, is all the Evidence relative to those Miscarriages. There is, indeed, another Gentlewoman of Note, one Mrs. *Alice Bates*, who speaks in some measure to the same Period of Time; she appeared to be a most willing Witness; though upon sifting her, she own'd she was an absolute Stranger to this Miscarriage supposed to be at *Vice's* in *Essex-Street*; the Account, my Lord, she gives, is, that my Lady after this Miscarriage, I think in less than two Months after, was so big with Child, as that it was obvious to every body, and this Woman who was a *common Servant* at *Briscoe's* House, takes the Freedom to visit my Lady at *Vice's*, and to clap her Hand on my Lady's Belly, in a joking Way, to com-

pl ment her on her big Belly, her *little big Belly*, as she calls it.

There is another Circumstance in this, which is highly improbable, my Lord *Altham* might have been a very free Man with Women as well as Men, for any thing I know but the Circumstance of his clapping this Women, an ordinary Servant Maid, on the Shoulder, and saying, *God, Ally, Moll is with Child*, is so unlikely to be true that no Degree of Credit ought to be given to it.—Can it be conceived, that, if my Lord *Altham* gloried so much in the *big Belly* of his Wife, and could be so free with *this common Housemaid* of *Briscoe*, or if it were of any Use or Pleasure to him to have such a Story go about, that he would not have found a much fitter Person to divulge it to, and a much more proper Opportunity of making it public? How can it be reconciled that *Alice Bates* should know this, and yet that neither Mrs. *Briscoe* or Mrs. *Cole* should not have known any thing of it? Nay, that not any one of either my Lord's or Lady's Relations should have any Knowledge of, or be apprized of a Circumstance of so much Consequence to the whole Family in general. Mrs. *Bates* says she published this in her own, meaning *Briscoe's* Family; and yet Mrs. *Briscoe* and Mrs. *Cole*, my Lady's most intimate Acquaintance, if they are to be believed, say that they never heard one Word of it. This, in my Apprehension, my Lord, takes off all Credit from Mrs. *Bates*, and especially when her Testimony is compared with that of *Catharine M'Cormack*; Mrs. *Bates* says, that this Pregnancy of my Lady's was obvious to common View, that she saw her often afterwards, and that she still grew bigger.—*Catharine M'Cormack* tells you, that she was married a little before *Christmas*, and that it was then scarce perceivable. These things are totally inconsistent; and as it happens in Cases of this Kind, where Evidence is made, the Witnesses notwithstanding the Care of their Instructors, will vary, and by differing so widely in material Circumstances, as they do here, and by the Inconsistency of their Testimony, must discover the Falshood of the Fact, which they are produced to prove; whereas if Truth was their Guide, in what they

swear

I swear to, that will appear always uniform and consistent, whoever delivers it.

I come now, my Lord, to consider, that which is the remarkable Period in this Case, and upon which alone the Fate of this Tryal must depend, I mean the Period at *Dunmaine*. The Scene of this pretended Birth of the *Lessor* of the *Plaintiff* is laid at *Dunmaine*, and is mentioned to be either the latter End of *April* or the Beginning of *May*, in the Year 1715. I have mentioned before, that in order to give some face of Probability to this Play, they have not only furnished my Lady *Altham* with a Child, but with two Miscarriages in the same Year. The first Person of Note that is produced, to give an Account of this Son, is *Master Dennis Redmonds*; I suppose, a Gentleman, that upon that Occasion did not appear in his worst Habit, a Man that by his own Confession was but a *Stable-boy*; and I beg leave to rely upon it, that from his own Testimony he appears not to have spoken one Word of Truth, in what relates to this pretended Birth; if your Lordship will please to recollect, you will find, that he sat out with telling that he came into my Lord *Altham's* Service 33 Years ago, and that he remained in his Service for three Years. This I take upon me to assert was the Evidence he gave. Now, it appears to your Lordship, and the *Jury* without Controversy, that my Lord *Altham* was at *Dunmaine* in the Year 1711; and taking it upon the Witness's own Account, he must have come into his Service in that Year, and by this, and by his remaining in the Service but for three Years after, he must have quitted the Service before the pretended Birth in *April* or *May* 1715, for his three Years must have been out in the Year 1714; and your Lordship observes, that he says his Recollection of this Fact of the Birth, was, from his being hired to be a *Stable-boy* 33 Years ago, and his living there three Years in that Station; so that he is, by his own Confession, now brought here to give Testimony to a Transaction which happened a considerable Time after he left the Service. My Lord, when a Person of this Kind, a Fellow whose Office it was to rub Horses Heels, and clean out Stables, is produced to give

Evidence touching a Matter of this Nature, in a noble Family, and to swear to a Transaction in a Lady's Chamber, where it cannot be presumed he could have any Admission or any Kind of Access, or be privy to any thing that happened there, it must naturally induce an evident Suspicion on every thing that he takes upon him, and can be prevailed upon to swear positively, though it is not possible directly to contradict such Kind of Evidence. This Man is able to give an account of nothing else, except his Knowledge that *Thomas Rolph* was in the Family, but as he says, not *Butler* at the Time he mentions his being sent for a *Midwife*; he remembers nothing relating to what happen'd in the Family or the Circumstances of it, during the Time he says he lived there, but is barely necessary to prove the Fact he is produced for; he can't tell the Name of a single Servant, other than that of *Charles Magher*: But it appears to a Demonstration that *Charles Magher* did not come into this Service till long after this supposed Birth, and that *Thomas Rolph* was the *Butler*, and continued so till some time in *Sept. 1715*.

The next Witness to this pretended Birth is one *Mary Doyl*; and she, to say the best of her, was, according to her own Account, a *Houfemaid* in this Family for some Time, and she, like Witnesses in other Cases, who are prepared for a single Story, says, she came into the Service about 28 or 29 Years ago, though she has not mentioned any particular Circumstance to make her recollect the Time, and she owns she made no Stay in the Family. This common *ordinary Houfemaid* is known the principle Person that is to give an account of this Birth. She happened, luckily and most critically, to be in my Lady's Chamber when the Child was born, though she owns she never was in the Room before or after. She does not know a single Person who was present, except after near an Hour's Recollection, *Mrs. Heath*, and *Nelly Murphy*, and *Mrs. Butler of Rofs*. She does not know or recollect who was in the Family besides, nor does she give an Account of any other Thing that happened at *Dunmaine* at or about this Period of Time, declaring that she has not the least Recollection thereof. She says she remained

remained in the Family four or five Months, about 29 Years ago, and was never there before or since. I now submit it to your Lordship, when a Witness of this Kind, a Servant of the lowest Degree, is ushered in this Way to give Evidence of a Fact of so great Importance and Consequence, and contrives to have this happen during the Time of her being a Servant there, and appears by her own Testimony, not to have any Knowledge or Recollection of any thing else that happened during that Time, which lay much more properly under her Observation than any thing in my Lady *Altham's* Chamber, what Strefs can any rational or discerning Man lay upon her Testimony, or what Credit can it receive? But suppose it were true that she saw a Child just born in my Lady's Chamber, is it credible that this Birth should be only known to a *dirty Housemaid*? A Son born to such Honours and so great Estate, and in a Country where the Parents were so well known, and where the Bulk of that Estate, possess'd by a great Number of Tenants, many of whom were Gentlemen of Fortune, and related to the Family, was situate, no body though ever so credulous can believe a Tittle of this Kind of Evidence.

The other Witness to this imaginary Birth is the under *Laundrymaid, Elenor Murphy*. She tells you, she never was in my Lady's Chamber before or after; and she can tell no Particulars or Circumstances, or when, or where, or how any Thing happened in the Family. All that she recollects is, that a Child was Born about 28 or 29 Years ago. The introducing Witnesses in this Manner draws them naturally under strong Suspicions, and a Man can't but distrust every thing that comes from them; and, I think, from the whole Tenor of their Evidence, and supposing they ever were in the Offices they pretend in this Family, it must have been long after the Period of Time when this Birth is laid. But your Lordship will be pleased to recollect, that from some Passages that happen'd upon the Table yesterday, the Credit of these two Women must be totally destroy'd; for as they both speak to the same Transaction, if I can from the Mouth of one of them shew her to be perjured, I think
it

it must not only affect and take away her Credit, but the Credit likewise of the other, who says she was there at that time. *Elenor Murphy* was then asked several Questions by the Court: The Woman, I believe, was not so well able to answer yesterday, as she was when she was first examined; her Lesson, possibly, was upon the last Examination out of her Memory; one Day makes a great deal of Difference in their telling of a made Story, especially among those occasional Witnesses of a low Rank. She was asked then, whether *Mary Doyle* or she came first into the Service? And I appeal to your Lordship's Notes, whether she did not then, over and over again, at least four or five times, upon being asked that Question, positively swear that *Mary Doyle* was in the Service before her. Then after a good deal of Examination to other Purposes, and after calling in and asking several Questions of some other Witnesses, she was asked the same Question again, and she then positively swore twice over at least, if not three times, that she was there before *Mary Doyle*. This, my Lord, is a flat Contradiction of herself, by herself; and, to be sure, was from new Instruction; for a vast deal of the Testimony of Witnesses produced by the Plaintiff has been, from time to time, during this Trial, mended and improved upon every further Examination, on other Depositions of the same Witnesses, by and from the Helps given them by the Plaintiff's Managers during the Adjournments. — But in Addition to what I have observed on this Testimony of *Elenor Murphy*, the Circumstance which I think must convince every Body of the utter Falseness of what she has said in this Particular is this; the Time of the great *Eclipse* was very remarkable, and in the Memory almost of all People, and particularly of this *Elenor Murphy*, as she frequently declar'd on her Examination. This Woman, upon Recollection, swore she had lived at Mrs. *Butler's* in *Ross*, before she came to live with my Lady *Altham*: And being asked where she lived at the Time of this *Eclipse*, it struck her Remembrance, and thereupon swore she then was in Madam *Butler's* Service at *Ross*. Now, my Lord, I think it will not be controverted

troverted but that the Time of this *Eclipse* was the 22d of *April* 1715, this is just about the very Period that is laid for the Birth of this Child; and if this Witness *Elenor Murphy* was in the Service of Mrs. *Butler* at *Ross* at the Time of this *Eclipse*, though she had left her the very next Day after, it is impossible that what she swears touching this pretended Birth should be true; for she positively swears she was in my Lady's Service at *Dunmaine* three Months before the Child was born, and supposing she had come into that Service the 23d of *April*, the very Day after the *Eclipse*, this Child could not possibly be born until the 23d of *July*. This calls into my Mind another Circumstance worthy, I think, of Observation; for in this Case, and by having such Kind of Witnesses to encounter, it is from Circumstances only, that Persons resolved to commit Perjury, and to swear positively to Facts, which from the Nature of the Proof they intend to give, cannot be directly contradicted, that the Truth can be discovered. It often happens when People are framing a Scheme, that let their Ingenuity be never so great in Contrivances, they had not perhaps Judgment, Recollection, and Foresight, enough to make all the Parts of the Machine hang and keep well together. Your Lordship remembers, that *Mary Doyle* swears that Major *Fitzgerald* was at the House of *Dunmaine* immediately after the Birth of this Child, and lay there one Night, but as she and *Elenor Murphy* both go to the same Transaction, I consider them both in the same Light; for if what either of them has sworn as to the Birth be false, the other must be certainly perjured. *Mary Doyle* swears, that she is sure Major *Fitzgerald* lay there that Night, to wit, the Night of the Birth; Major *Fitzgerald* swears, he was there immediately after, but did not lie there, but went to *Ross* that Night. He swears positively to the Time of his having been at *Dunmaine*, he says it was in *September*, he gives such Circumstances as must take away all doubt, that if he was there at all, it was in the Month of *Sept.* 1715 and not before; he says the *Harvest* was making up before he left home, that he came to and was at *Ross* in *Sept.* and at *Dunmaine* the very Day after this Child

Child was born ; that my Lord invited him home to his House to tap the *groaning Ale*, that he excused himself from going that Day, that my Lord then promised to let him know when my Lady was brought to bed, and accordingly, that very Night, most critically, he receives a Message from Lord *Altham* of my Lady's Delivery, that he went the next Day, and was considered in so Friendly a Light that this Child, of about 12 Hours old, was produced to him, that he made the ordinary Compliments to the Father and to the Lady, though he did not see her, and kissed the Child, and made a particular Compliment to the Nurse, he gave her half a Guinea, at a Time when that Species of Coin was so scarce in this Kingdom that a Man might have gone 50 Miles before he could have found one. Now, I would desire to know which of these two Stories is true; is it true that she was brought to bed of a Son in *April* or *May*, and in *Sept.* in the same Year? I presume the Counsel for the *Plaintiff* won't say but that Major *Fitzgerald* made as good an Appearance as *Mary Doyle*, that he's intitled to better Credit, being a Gentleman of Figure, and who had been extremely intimate, as he said, in the Family; and he fixes the Time precisely to *Sept.* Surely the Gentlemen of the other Side will have too much Modesty to set the Testimony of *Elenor Murphy* and *Mary Doyle* in opposition to Major *Fitzgerald*. He has given your Lordship such Circumstances as shew his Memory was so good that he could not be mistaken. He tells your Lordship his Attack on the Highway in his Road home from *Ross*, he has told you how he defended himself, and that though he did not kill the *Man* that attacked him, he killed his *Horse*. This is a Circumstance of such Notoriety that it is impossible he should be mistaken. I say, therefore, that in this Case the Gentlemen must either give up the Testimony of Major *Fitzgerald*, or that of each of these two Women; for both can't be true. And for my part, if I was under a necessity of giving Credit to one or the other, I should certainly give it to Major *Fitzgerald*, from his Appearance, and from the Figure that he made upon the Table, and the Inconsistency and palpable Contradictions of *Mary Doyle* and *Eleanor*

Murphy

Murphy to one another; it being therefore impossible that both these Accounts can be true, and as this Story told by these Witnesses, must necessarily, in part at least, be made up and framed without any Foundation in Truth, I think it brings such an Imputation upon the Whole of this Case, on the Side of the *Plaintiff*, that no Credit can be given, either to those Women, or to the Major, who are the only Persons that have sworn to this pretended Actual Birth.

I should think, and am persuaded, that if there were any Truth or Reality in what these two obscure Women and Major *Fitzgerald* have sworn, it is a Matter that could have been most clearly made out by unexceptionable and reputable Persons; but has there been one Person of Credit, of Rank, or Fortune produced to this, or even to the Reputation of it? or that any such thing was ever known or understood in the Family, or even mentioned till long after the Death of Lady *Altham*, who never said a Word of any such Thing during the whole of her Life, but frequently, after my Lord's Death, lamented that she had no Son. Has there been a Relation, Neighbour, or Tenant, or any Person who has a Freehold of ten Pounds a Year produced or examined to prove this Birth? A Birth of so much Importance in the Country where it is said to have happen'd, a Birth laid within three Miles of *Ross*, a populous Town, a Town of Trade, the which, for by much the greatest Part of it, then the Estate of Lord *Altham* and in his Possession; several considerable People in it, and in the Neighbourhood, a large Estate besides belonging to the Family in that very Country; and yet in this whole Country, there is not one Person, above the meanest Condition, to be found to give Testimony to this Birth, nay even to the Reputation of there being any Child at this Time. It is a Mystery to me, that an Event of this Kind could have happen'd, a Thing that must have been so public in it's own Nature, and yet that no one Person of Condition or Character should be found to give an Account of it. There is another Circumstance relating to this, that has with me very great Weight, and I hope will have the same with the Gentlemen of the

Jury,

Jury, and that is, the not producing the *Nurse* of this Child as a Witness for the *Plaintiff* on this Trial. She, of all Persons now living, could, I think, have given the best Account of this Matter for the *Plaintiff* that he could hope for from the Testimony of any Witness. It is a Rule well known, that every Case ought to be proved by the best Testimony the Nature of the Thing will admit of, and surely this Woman was the very best Witness that could have been produced on the Side of the *Plaintiff*. This Birth is alledged to be in the Year 1715, at *Dunmaine*, and it has not been sworn, that a Woman of the Name of *Joan Landy* was the Nurse of this Child, that she was immediately sent for, and pitched upon as the Nurse; that the Child, in about five Weeks after it's Birth, was entrusted to her Care, and lived with her for about 15 Months. Why is this Woman then not produced? She is named in the List of Witnesses to be produced and examined on this Trial for the *Plaintiff*; and the Gentlemen of the other Side did, very early in this Case, promise that we should see her. And as she was the Person that was to wind up this Case, and carry it through all it's Stages, she was to be the *Plaintiff's* last Witness, and this was the Reason given for not producing her till the Trial was near an End; but then they told us she was not to be produced; that she was a weak Woman, and might forget or be easily put off the Thread of her Story; but this was plainly not the true Reason; but it must be this, that she was a Person, who, if there had been any Truth in what is pretended touching this Birth, must have known it, as she must also have known, that the Child she nursed was not a Child of Lady *Altham's*, and therefore of the utmost Danger to the present Scheme of imposing a Son upon this Family to have her at all produced. My Lord, the weakest Man or Woman living can speak Truth, and will, probably, when upon their oath, say no other; it is a Hardship for a weak Mind, who knows a Fact not to be true, to colour it, or by any Fraud or Circumstances of Probability to give it the Appearance of Truth. Their Consciousness that *Joan Landy*, who was all the while in Town, would not, or was not able to do this, must have been the only Reason for not producing

ducing her. The Tenderneſs and parental Affection that Mr. *M^r Kercher* would have it believed Nurſes have for their Children, particularly in this Kingdom, would, I ſhould think, create a Willingneſs in this Woman, by all honeſt Means, to promote the Welfare of the Child ſhe had nurſed; and the not producing her to answer ſo uſeful a Purpose as this now in Hand, if it can have Succeſs, ſhews the whole to be a Fiction. She muſt certainly know whether ſhe had a *natural* Son by Lord *Altham*, or not, and what is become of that Son; ſhe muſt know if ſhe nurſed this Child or took Care of it, and who was the *real* Mother; ſhe muſt alſo know in what Manner ſhe brought up, and what become of it after it was taken out of her Hands, and when and by whom all this was done. So that, if there was any Truth in this Story, ſhe muſt of all others be the beſt qualified by her Evidence to ſupport that Truth. I would further obſerve to your Lordſhip, that *Mary Doyle* and *Elenor Murphy*, or one of them, ſwears that this *Joan Landy* was married to one *M^cCormack*, and lived on my Lord *Altham*'s Eſtate before the Birth of this Child; this I only mention to ſhew your Lordſhip, that where things are cooked up in this manner, they are not always done with ſuch Exactneſs, but that they will differ even in material Circumſtances; for all the other Witneſſes on the Part of the *Plaintiff* agree, that ſhe was not married to *M^cCormack* till after my Lord *Altham* left *Dunmaine*, which was in the Year 1718. Your Lordſhip, in Addition to theſe Circumſtances, will now be pleaſed to conſider the Improbability of the Story itſelf, as it is told on the Part of the *Plaintiff*. By their Accounts it is plain, that this *Joan Landy* was with Child, for otherwiſe ſhe could not have been qualified to have been a Nurſe; that her Child was very near a Year older than Lord *Altham*'s, ſo that her Milk muſt have been a Year old; that the Child ſhe had was a *Baſtard*, ſo that at this Time ſhe was unmarried; then ſurely, my Lord, it is in the firſt Place highly improbable, that if there had been a Child born to this noble Family, ſo little Care ſhould be taken of the nurſing of this Child, as to truſt it into the Hands of this Woman, whoſe Milk was then a Year old, a Woman
known

known to have a Child out of Wedlock, and one, who by the Accounts given of her on all Sides, notwithstanding she chose, for some Hopes of Profit, to lay her *Bastard* to my Lord *Altham*, was yet not so chaste as to confine herself to one Father for it. I say, that this Circumstance, which must be known to Lord *Altham*, and could not well be concealed from my Lady, is a Reason why she should not, of all Women, be trusted with the Care of this only Child of my Lord and Lady *Altham*; it being plainly to be suspected, that such a Woman, who had a *Bastard* Son, which she fathered upon my Lord, might either change the one for the other, or, by treating her own Child with greater Care and Tenderness, might wholly neglect the other. The Danger of employing such a Nurse is so obvious, that it is not probable, nay, it is hardly possible, that *Joan Landy* should have been pitched upon by Lady *Altham* for that Office; but there is another Reason why my Lady could never have agreed to her being employed, and that is, that when she was informed that this Woman had laid her *Bastard* Child to my Lord, she had her turned out of Doors; and yet now they would have it understood, that Lady *Altham* after this, was all at once reconciled to this Woman, and that she was pitched upon to be the Nurse of this pretended Child of my Lady's. This however shews the Ingenuity of the Contrivers of this Scheme, and how ready they are to deck out, and give Colours to this imaginary Phantom. The Woman no doubt had a Child of her own which she nursed, and this Child after the Separation of my Lord and Lady *Altham*, is taken into my Lord's House, and there goes by the Name of —, and is understood to be the *natural* Child of my Lord by this Woman. Now this Kind of Adoption, and the subsequent Notice which my Lord *Altham* took of this Boy, after he had parted with his Lady, by whom he never had any Issue, and the Care he took of clothing him, and putting him to some ordinary Schools, by the Figures cast by Mr. *M-Kercher* and some other ingenious Persons, has turned this *Bastard* Child into a *legitimate* Son of Lord *Altham* by his Lady. Can it, my Lord, ever be believed, that my Lady *Altham*, who, if this Story

be true, had no Child but this, (my Lord *Anglesey* at this Time having no Child) and this then considered as the only Child of this noble Family, should suffer this only Child, the *Hopes* of so many considerable Personages, to be nursed in a little poor *dirty Cottage*, by the Description scarce fit for the poorest and meanest of Cottagers, and especially, when it does appear, that there was full Room and sufficient Conveniencies in my Lord's Dwelling House at *Dunmaine* for the nursing of him there, where he must always have been under my Lady's own Eye and the constant Care of Servants and Attendants proper for that Office? I fancy it is not very usual for People of Distinction, who are not straitned for Accommodation at Home, and have an only Child, to send out that only Child to a mean Cottage? But this must happen, and be made out, or at least attempted for the *Lessor* of the *Plaintiff*, or he has no Case; and all the other Stories that have been told and sworn for him will be of no avail; but the Proof even to this ought to be as clear as the Sun at Noon Day before any rational Man can assent to it. It is admitted, even by the *Plaintiff*, that this was originally a poor mean Cottage; but in order to colour the Fiction of the Birth of a Son of the Body of Lady *Altham* the better, this Cottage, by her Direction, to be dressed out, enlarged, and adorned for the Reception of this young Heir, this young Prince, in a Country full of wealthy Tenants of his Family, amongst whom he might, if it were necessary, have had the Choice of such a Nurse as was free from all Blemish, and not only of good Repute, but of such Circumstances as it might be fit to intrust the Care of such a Child to. And *Eleanor Murphy* swears that a third Room was added, having consisted before of only one Room, though by something that run across Part of it, it had the Appearance of two, and in this third Room this young Heir is lodged. I beg leave to observe, that this Addition of another Room is contradicted by every other Witness examined on the Part of the *Plaintiff*. What they all say, is, that Part of the House was repaired and furnished, but the House itself not enlarged. Now, the Gentlemen of the Jury will consider the Improbability of this Story. This Child

Child is born, and, according to this Evidence, sent a Fortnight after to this new built Room, it must have been built about that Time, as appears by the Testimony of another Witness, who applied for the nursing only three Weeks before the *Lying in*, so that this Room must have been a building for about a Month before this Child was put into the Care of this *Kitchen Maid*, who was pitched upon both by Lord and Lady, as some of them have sworn for his *wet Nurse*, and sent to live at this poor *Cottage*, and all this is to give Colour to the main Point, which is that of the pretended Birth; for without improving and adorning this contemptible *Cottage*, where the Son of Lord and Lady *Altham* was to be settled, the other Point must have wanted great Aid to make it all probable, and this is contrived to induce some Sort of Probability of the Truth of it; yet if it were true, as it is not, that such an Addition was made to this *Cottage*, yet the Danger arising from lodging a tender Infant in such a great Building, without Floor or Ceiling, was such, that it is not to be imagined that any body of common good Nature or Tenderness, much less a Mother, and a Lady of so much Fondness for a Child as is pretended she had for this, should be in such a Hurry to drive it out of her own House and Sight, without any Sort of Reason, into such a Place, and into the Care of such a Woman. If this had been a Child of ordinary necessities, Parents, who had a Number of Children, and did not well know how to dispose of or provide for them, there might be some Colour to suppose he might have been put out in this Manner; but among People of such Condition, and where there was no other Family but my Lord and his Lady, and this one Child, can it ever be believed they would have exposed the Person and Constitution of their only Child in such a Manner? No rational Man can think it. But this, like many other Parts of the Plaintiff's Case, has been framed out of the fact, which is the real Fact, of my Lord *Altham's* Bastard Son being nursed at this Cottage, by the Woman whom he was believed to have got him, and this *Bastard* is, by all those Embellishments and Ornaments now given to

this sorry *Cottage*, endeavoured to be improved into the legitimate Son of this noble Lord. The next Step the Plaintiff has taken, in order as I suppose to give some Dignity to his Birth, was to shew the great Rejoicings pretended to be made on that Occasion, and the Witness for this Purpose is *Philip Breen*, who says, that he only saw publick Rejoicings upon the Birth, and that he saw my Lady walking in the Garden when with Child; and he swears that *McCormack* did not marry *Joan Landy* until after my Lord left *Dunmaine*, which was a considerable Time after he separated from his Lady. But with great Submission, my Lord, the Rejoicings that are mentioned by one or two Persons are Circumstances of no Moment, and the Proof of them is delivered in such a Manner, that it is impossible to encounter the Testimony of these Witnesses; the Rejoicings spoken of were making of *Bonfires*, and it is pretended that they were made in a Grove above the House, a Place where they could not well be seen, and a very odd Place to make them in; a *Bonfire* is usually made on an Eminence, in an open Part of the Country, that it may be seen at a Distance, and one can hardly imagine that they should make it in the Grove, unless they meant to set the Grove on Fire, which I suppose was not their Intention. Evidence of this Kind, as it may be applicable to any other Thing as well as the Birth of a Child, is, in my Apprehension, to have no Weight. But the main Point is the Birth itself: And what Proof is made of it, it wholly rests upon the Evidence of *Mary Doyle*, *Elenor Murphy*, and *Dennis Redmond*, who from the Observations I have made, and from the Nature of their several Stations whilst in this Family, appear to me to deserve no Kind of Credit. The Gentlemen of the Jury must, in my Apprehension, look upon the whole of this Story, as delivered by the Plaintiff's own Witnesses, as an absolute Fiction; but if they should have any kind of Doubt about it, for which I see not the least Room, yet when the positive Proof of our Side comes to be considered, no such Doubt can remain, and no Man alive, that has
heard

heard the whole of this Evidence, can hesitate in declaring that the *Lessor* of the Plaintiff is the Son of *James Landy*; and the most that can be said for him is, that after my Lord *Altham* parted from his Lady, he acknowledged and treated him as such. Your Lordship will please to observe how the Proof stands on the Part of the Defendant.

I mentioned to your Lordship before, that Mrs. *Heath* was the *Woman* and Companion of Lady *Altham*, from her first coming into *Ireland* to the Hour of her Death; and that she must be the most likely, of all Persons living to know and be fully informed of the several Circumstances of the Family, and of every Thing that passed in it during my Lord *Altham's* Cohabitation with my Lady, after they came together and were reconciled, is what can scarce be doubted even by the Plaintiff. The Account she gives your Lordship is, that Lady *Altham* went to *Dunmaine*, in or about *Christmas* 1713, that she remained there with my Lord till the *Summer* following, that my Lord came up to *Dublin* early in the *Summer*, and my Lady having heard of some Disputes and Quarrels he had in the Town, she followed him in *August* 1714; that they remained in Town until about *Christmas* following, that they went to *Dunmaine* and remained there, and in that Country, till the Beginning of *Summer* 1715, that they then came to *Dublin* and remained there till 1716, and went afterwards to *Dunmaine* in the Year 1716, and remained there till the *February* following, when the Separation between them happened. This Woman must unquestionably have known it, if my Lady was at any Time with Child after her being in *Ireland*, either at *Dublin* or at *Dunmaine*; and, in my Opinion, it was morally impossible that she could either have been with Child, or have miscarried, or been delivered, without the Knowledge of Mrs. *Heath*; this, I think, is clear beyond all Controversy; for she swears positively she was constantly Attendant upon her Person, that she was never absent from my Lady but for one Week only, which was about *Christmas* 1715, when she and my Lord went to *Dunmaine* without my Lady,

Lady, who staid in *Dublin* till they returned; and that she never knew, or had the least Reason to imagine, she was at any Time with Child. This is sworn to, I beg Leave to say, by the Person in the World who must have best known whether there was such a Fact or not. The next Witness is *Thomas Rolph* the *Butler*, who was a Servant at this Time in my Lord's Family, and from the Nature of his Station must undoubtedly have known every Incident of Notoriety or Consequence that happened in the Family. He swears positively he never understood or heard that my Lady had a Child, or was with Child, or had miscarried; this Man appears to have been always a resident Servant, and from his Employment must have had frequent Intercourses and Conversation with all the rest of the Family, and such Persons as resorted to them; and how so remarkable and important an Event as this should happen and he not know or even hear any Thing of it, is surprizing, and not at all credible. *Dyer*, who was my Lord's *Gentleman*, swears the same Thing; these were the principal Servants, and must be supposed to have better Opportunities of knowing the Truth of these Facts, than the Servants of the meaner Degree, and kept more at a Distance. *Rolph* swears that he constantly attended my Lady at Dinner and Supper, and never observed or heard that she was with Child. We have produced many Persons of Note that lived in the Neighbourhood, and were intimate in the Family. I need not go into the Particulars of their Evidence. It is sufficient to shew, that every Gentleman and Gentlewoman that was examined, declared upon their Oaths that they never heard my Lady had a Child, and that it was a Thing impossible in its own Nature, as they were well assured, and believed, that she should and they not know of it. I humbly rely upon it, that from the Nature of this Case, if there had been a Child born, publicly christened, publicly avowed for the Son of this noble Lord and Lady, it is a Thing that even in the most distant Part of the Country must have been publicly known. It is impossible it should not be well known in the Neighbourhood, and to the Relations

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of the Family; and its not being so, proves to a Demonstration that the Fact is not true. Mr. *Palliser* is mentioned as the unhappy Cause of this Separation. He swears positively, that in all his Knowledge of this Family there never was a Child that he ever heard of. There was one Gentleman examined Yesterday, Mr. *Napper*, and, I think, there is something arising from his Evidence as very strong to this Point. The Gentleman says, he has lived in the Town of *Ross* for 50 Years past, within three Miles of *Dunmaine*, where this Scene is laid for this pretended Birth; that he was intimately acquainted in the Family, that he was married to a near Relation of Mr. *Annesley* in *England*, that he was entrusted in some of the Affairs of this Family of *Anglesey*, and consequently one who, in all probability, must know the State and Circumstances of it. He tells your Lordship, that he was employ'd, on the Death of Lord *Altham*, to make *Minutes* of the *Ross* Estate for the then Earl of *Anglesey*, who succeeded to it upon Lord *Altham's* Death, he having died without Issue-Male, and there being no Remainder of that Particular Estate by the Will of Earl *James* to the present Earl. Mr. *Napper*, my Lord, is a Gentleman of Fortune and of Understanding, he well knew that, if Lord *Altham* had left a Son, Lord *Anglesey* could no more enter into or possess that Estate than he could; he made *Minutes* of Leases in the Town of *Ross* on Behalf of the late Earl *Arthur*; and he tells your Lordship, that no one single Person ever even as much as hinted any Objection or Doubt concerning the late Lord *Anglesey's* Title to that Estate, or even mentioned that Lord *Altham* had or left a Son; although it is well known, if he had, that such Son must have been intitled to the Inheritance of *Ross* and several other Lands; but no such Thing was mention'd, or in the Thoughts or Knowledge of any Body.---And how is it possible to conceive, that in this Town of *Ross*, where my Lady lived after her Separation for four Years, it must not, if there had been any Truth in it, not be universally known to all Ranks of People that my Lady had a Child to inherit the Estate, or to imagine that it could have been a Secret there

there after the Separation in 1716, or that my Lady herself would have concealed it, if it were for no other but the present Advantage she might have by having her Son, if any she had, in the Enjoyment and Possession of that particular Part of the Estate which could not come to the late Lord *Anglesey* while my Lord *Altham* had any Issue-Male of his Body living? My Lord is glad to get rid of his Wife, talks of his Happiness in this in all Companies; would not this naturally raise People's Curiosity to enquire if there were any Children between this Couple who were just parted, and especially in that County, where such a vast Estate lay which was to go to those Children, if any such had been? My Lord gives his Wife nothing for her Support, she resorts to her Friends in *England* for their Assistance. Can it ever be imagined, when they heard of a Charge against her, that my Lord had turned her out of Doors for *Adultery*, that they would not have informed themselves whether she ever had a Child, and if the Fact had been so publick as is now pretended, could it ever have been concealed from a Man of the Duke of *Buckingham's* Prudence and Sagacity? If he had imagined any such Thing, would he not have published it, and would have suffered the late Earl of *Anglesey* quietly to enter upon and enjoy that Estate, without saying one Word of a Son left by Lord *Altham* and his Title, which he well knew was prior as to those Lands to any Title of my Lord *Anglesey*? My Lady *Altham* herself must have made this Birth, if there were any Truth in it, known to all the World; the Thoughts of her Son must have been her principal Comfort at that Time, the Expectation of seeing him inherit such an Estate must have filled her Mind with Joy, which must have broken out in every Company. She could not fail to have published, where-ever she went, a Matter of such Importance to her and to the Family to which she was allied. A Mother's Tenderness, nay her very Pride would have made it the constant Subject of her Discourse, both at Home and Abroad; and the Prospect she had of seeing her Son one Day in Possession of such a Fortune, and such great Honours, must have been her principal Topick of Conver-

sation, whereby this Fact must have been universally known where-ever she lived, or where-ever she came. And now that I am on this Part of the Case, I would willingly here make some Observations upon the Evidence of *James Walsh*, which from the whole Tenor of it is impossible, I think, to be true. He says, my Lord, that Lady *Altham* came into *Ross* before Dinner, on the Day of her Separation, and names the Company that was with her on that Day, which was on a *Sunday*: *Ross* is a considerable Town, and Numbers of People eternally gazing about in every Country Town just after Church Time. Now that my Lady should chuse to come into such a Town, just before Dinner Time, on a *Sunday*, is extremely improbable; common Prudence and Discretion would make her wish to avoid being the Object of publick View on that Occasion. She might go thither in the Morning early, or towards the Evening, but why she should chuse to go in the Middle of the Day, is to me unaccountable. In the next Place, this Man differs from every other Witness with respect to the Carriage my Lady went in; he says it was a one Horse Chair, and is particular in this Circumstance, that he himself handed her out of the Chair; every other Witness says it was a Carriage with four Wheels, some a four wheeled Chair, and some a Chariot, but all agree it was a four-wheel'd Carriage; but your Lordship will observe, that it is of our Side sworn, and with such Circumstances of Truth, as leave no Room for any Doubt, that it was Night, or at least near Night, when my Lady went to *Ross*; she was unwilling, to be sure, to be exposed to public View on such an Occasion; and Mrs. *Heath* swears that she desir'd the Coachman to go slowly, so as it might be *dusky* when she came into the Town; and this is sworn also by several others, whose Testimony fortify and support that of Mrs. *Heath* in that particular, and by the Nature of the Thing itself, and in regard that neither Captain *Butler* or his Wife was at home when my Lady came to their House, and that their servants only were within, it cannot be believed that my Lady dined there on the Day of the Separation, and, and if she did not dine there on that Day,

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the Whole of *Walsh's* Testimony is destroy'd ; for he mentions a Conversation with my Lady there, on that Day at Dinner ; and, in my Apprehension, what he relates of it appears plainly not to be true, and that he is, like the rest, a made Witness ; and therefore think, as the Plaintiff, in this Part of his Evidence, as in all the rest, has totally failed in his Foundation, which is the Birth, and that the Proof given on the Part of the Defendant, with respect to that Point, is so clear and convincing to the Understanding of every rational Man, that no Doubt can remain.

I shall now, my Lord, as shortly as I can, take Notice of the dressing up that Part of the Story at *Dunmaine*, for which one *Joan Laffan* is produced. A notable Person, I confess. *Joan Landy*, who is pretended to be the wet Nurse, was not thought, it seems, a proper Witness to be produced. She knew too much of this Sham to be fit to be trusted to stand an Examination about it ; but Mrs. *Laffan* the pretended dry Nurse is to supply all that is wanting in the preceding Testimony. And I think I shall be able to shew your Lordship and Gentlemen of the Jury, to a Demonstration, that most of the Particulars she has sworn to are utterly false ; and if any of them are true, they can be accounted for in no other Way than by supposing, as the Truth is, the Lessor of the Plaintiff to be the Son of *Joan Landy*. My Lord, *Joan Laffan*, upon her first Appearance on the Table, was ask'd when she came into the Service of Lady *Altham* ; and her Answer was, that she came there in the Year 1716 ; this being observed, and this Woman being called at another Time during the Trial, she altered her Evidence as to this, and said it was in the Year 1715. I should not say that in a common Case, a Mistake about a Year was of so much Moment ; but that a Witness, upon Recollection, might set the Matter right, and shew that what she at first said was a Mistake. But what I judge is, that let a Case be ever so well colour'd, the Truth will at some Time or other break out and shew itself ; a cunning, knowing sensible Witness, may recollect and shelter herself, by saying she had forgot and was mistaken ; but in a Case of this Kind, where the Time comes to be ex-

tremely material, your Lordships must look upon this Apology of the Witness to be a Blemish in her Testimony; I own, when she came afterwards to consider the whole of her Evidence, and know she had differed from herself, she then endeavoured to reconcile the Contradiction; she said, she lived with Colonel *Deane* for some Time before she came into Lady *Altham's* Service, and that it was in *Harvest 1715*: This Alteration in her Testimony is easily to be accounted for, because she owns this Child was three or four Months old when she came into the Service, and if it was in the Year 1716, it is impossible that that Part of her Evidence should be true wherein she says that she came into the Service within three or four Months after the Birth of the Child; that would have over-reach'd her Time. This Woman is produced merely to give Credit to *Mary Doyle* and *Elenor Murphy*; whereas to her own Business with the Child, there was no Occasion for producing her till six Months before the Separation. But she is introduced at this Period of Time to give Credit to the other Witnesses, who say, that my Lord and Lady, Day after Day, went to this *Cottage* to visit this Nurse and Child. I only mention what the Woman first said about the Year 1716, to shew that the Truth will in some Shape or other disclose itself. Then, my Lord, the rest of the Evidence she gives is this; I came to live at *Dunmaine* in *Harvest 1715*, the Child was then about three or four Months old, he was nursed abroad at the House of *Joan Landy*; the Room was adorned and set out with great Elegance for the Reception of my young Lord; and agrees with *Redmonds*, *Doyle*, and *Murphy*, that the Child was dressed like a Nobleman's Child; but how it should come into their Heads how a Nobleman's Child should be dressed, I can't imagine. But I suppose they had this Part of their Evidence in their Instructions, before they came upon the Table; she says, that she continued *House-maid* for about a Year; that the Child was weaned at about 15 or 16 Months old, and was then put into her Care, and continued so for a Year and a half; and when she comes to be more particular, she says, that her Time of taking Care of this Child

Child was six Months before the Separation, and that he was taken out of her Care by *Charles Magher*, who came from *Kinnea* for him, and carried him thither; she also says, that *Charles Magher* was the *Butler* when she came to the Service, and both *Rolph* and she declare that they never saw one another until this Trial: Now, I think it is plain and obvious from the Testimony of *Rolph*, that he continued in this Service till between *Michaelmas* and *Christmas* in the Year 1715. Your Lordship saw the Man upon the Table; and I own, as to me, the Manner in which a Man delivers his Evidence makes always as strong an Impression upon my Mind as the Matter he does deliver. The very Behaviour of *Mary Doyle* and *Elenor Murphy*, and the Manner in which they gave their Evidence shewed a Consciousness of Guilt, and that they did not know what Answers, consistent with Truth, to give to the Questions propounded to them; they not only flatly contradicted themselves, but one another, in many material Particulars: And *Rolph* on the contrary, appeared composed and candid, and gave a fair and consistent Testimony; he told you when he came into this Family, when he left it, and the Manner how; that he quitted the Service on Account of a Quarrel with the *Gardener*, and of his being confined; that my Lord intended to prosecute him on Account of that Quarrel; his going suddenly to *England* to save himself from that Prosecution; his going into the *Guards*, and riding as a *Life-Guard* Man for near twenty Years. These are such Circumstances as must make an Impression in the Mind of every Man, and are of such a Nature as it is impossible for him to be mistaken in. Is there no satisfactory Evidence of *Charles Magher's* being the *Butler* till after *Rolph* was gone? You have nothing for that, but the Words of *Redmonds*, *Murphy*, *Doyle* and *Laffan*. The three first I have shewn have not only contradicted themselves, but one another; and I will now shew your Lordship and the Gentlemen of the Jury that *Joan Laffan* has also falsified herself. She now, last of all, says in *Harvest* 1715, the Child was three or four Months old, that it was weaned at about sixteen Months old, that it was put into

her Care within a Year after she came into the Service, and that she had the Care of him for six Months before the Separation, and also had the Care of him for a Year and a half in the Whole; so that taking her Evidence together, she must have had the Child first in her Care about the Month of *July* or *August* 1716, the Separation is proved to be the second or third of *February* 1716, and she swears that the whole Time that this Child was in her Care was but a Year and a half, so that she must have ceased all Care of him at about *February* 1717; she swears then that this Child was taken out of her Care by *Charles Magher*, and carried by him to my Lord at *Kinnea*, and it is not pretended that my Lord went to live at *Kinnea* till some Time in the *Summer* in the Year 1718; so that your Lordship sees, by comparing these three Times together, according to this recollected Account given by *Joan Laffan*, it is impossible that what she has sworn can be true; because there is a Chasm from the beginning of *February* 1717, till about the *Summer* of the Year 1718, when my Lord was at *Kinnea*, that no Account is given of this Child by her: But if your Lordship will take it according to the Evidence she at first gave of the Time of her coming into the Service in 1716, it may be reconciled, by supposing her to come into my Lord's Service about *Harvest* 1716, and that she lived in the Service about half a Year before the Separation; the Whole will then be easily accounted for; for after the Separation she may probably enough have been the Person appointed to have taken Care of that Child which my Lord had by *Joan Landy*, for a Year and a half till the Year 1718, when he was carried to *Kinnea*; and then it will be evident that the Circumstance of her attending this Child as a *dry Nurse* after the Separation, has been improved and heightened into her dry nursing and attending of him while my Lady was at *Dunmaine*, in order to give Colour to his being my Lady's Son: We don't controvert, in this Case, but that after the Separation my Lord *Altham* took this Child home from the Cottage of *Joan Landy's* Father, who was my Lord's Shepherd, and had Care taken of him there; and it is from that Circumstance

cumstance alone that the Testimony of *Joan Laffan* can in any Sort be accounted for: But, my Lord, the taking this Child to *Kinnea* is a Circumstance of no Moment; for unless the Foundation upon which this imaginary Fabrick has been raised, be true, all the rest is mere Smoke and must vanish into Air; for his Lordship's using his *natural* Child, when he had no other, with Tenderness, and perhaps with the Regard usually shewn to a *legitimate* Son, is a Thing we meet with every Day. But can any Gentleman of the Jury think that any Proof of that Kind is sufficient to intrude an Heir into the Titles and Estate of this noble Family? No, God forbid it should. But before I enter further into this, there is another Circumstance I would observe to your Lordship with respect to *Magher*, who could not, in my Opinion, be the *Butler* at the Time they pretend this Child was born; Mr. *Scott*, produced on the Part of the *Plaintiff*, swears that *Rolph* was *Butler* at the Time of the Christening; and if what he says be true, it is impossible that these other People have spoke the Truth with respect to the Time; *Scott* says he was out of the Kingdom at the Time of the Birth, that he came home at the Time of the Christening, and delivered several Messages to *Thomas Rolph* the *Butler*; so that, if what he says be true, *Thomas Rolph* was at that Time the *Butler*, and not *Charles Magher*. The two Women who pretend to be present at this Birth, and *Joan Laffan* know nothing of *Rolph*, they never saw him in their Lives, although his being a Servant in this Station, a *Butler* in the Family for a great Part of the Year 1715, and for several Years, is not controverted. These Observations, in my Apprehension, shew that the Time when these People came into this Service, (if ever they were Servants there) becomes a Circumstance of great Consequence in this Inquiry; and that it is impossible to account for this Part of their Testimony in any other Way, than by supposing, that after the Separation, the Child was brought into the House, and that these People and *Magher* may have been in the Service at that Time, long after *Rolph* was gone; and may at this distance of Time, from a frequent Repetition

of Circumstances to them, upon a Pretence of refreshing their Memory, and from what has been continually of late inculcated into them, have induced them to become Witnesses to prove that all this happened by above a Year sooner than it really did; and as these appear to be the Instruments made use of by those Persons who are at the Head of this Scheme, and have ushered in the *Lessor* of the *Plaintiff* for an Heir to this noble Family upon so sandy a Foundation, the Gentlemen of the Jury well know, without my dwelling any longer upon this Part of the Evidence, what Stress ought to be laid upon such Kind of Testimony.

Then, the next Circumstance to which the Gentlemen have produced Witnesses was, my Lord's Kindness to this Boy, and that he introduced him as his Son to several People that visited him, and that he treated him with some degree of Regard at *Kinnea*, at *Carrickduffe*, and in *Frappier Lane*, until he left that Place; which they have proved was on the first of *May*, in the Year 1724: Now, supposing the Declarations of my Lord *Altham* were certain and precise, no Body will say that they could *legitimate* his *natural* Son, or hurt any Man in Remainder to this Estate; for your Lordship hath heard it given in Evidence, that my Lord has frequently wished that his *natural illegitimate* Child was *legitimate*, that he might cut out his Brother. I will suppose that a Father might imagine this Child to be his, though not born in Wedlock, and that while that Opinion remained upon him, he might take Care of him, and perhaps introduce him into the World in the most favourable Light. He might perhaps have said to some People, that he hoped they might see him Earl of *Anglesey* one Day. I say that, supposing my Lord *Altham*, from an Imagination that this was his Child though by a common Woman, should have said this, and a great deal more, and should for a while have shewn so much Regard for him as to wish to make something of him, and should have given People by loose Hints to understand that he was his Son, nay, that he was his *lawful* Son; how does this establish the Fact of his Birth, or the *Legitimacy* of the *Lessor* of the *Plaintiff*?

Plaintiff? But I must say, from the Manner those Declarations are proved, which is, that my Lord *Altham* upon introducing or shewing this Boy, after he had separated from his Lady, did say, this is my *lawful* Son by my *lawful* Wife, such a Phrase or Manner of speaking ought in itself to make the Matter doubtful, besides that it could be no Evidence of the Truth of the Fact. I believe it is very unusual in any Family for a Father to tell his Friends or Acquaintance that this or that Child is his *lawful* Issue and by his *lawful* Wife; it is over-doing the Matter, and never could come from the Father or reputed Father of the Child, unless some previous doubt had been made about it; and I submit it to your Lordship, that as this Manner of Expression is unusual and uncommon, it begets a strong Suspicion that my lord *Altham* himself knew he was mentioning a Thing that required a great deal of Explanation to induce any Kind of Belief of the Truth of it. I will not, my Lord, take upon me to go minutely into the Evidence of each Witness to this Point of my Lord's Declarations, or when, or to whom, and what Times, and on what Occasions they were made; but as the Proof of this Boy's being *legitimate* rests upon my Lord's Treatment of him for a Period of four or five Years as a Child of his, and upon what is called Reputation, I shall beg leave shortly to consider how that Matter stands. There are several Witnesses that have been produced to this Reputation; Mr. *Messel*, Mrs. *Annesley*, the *Cavenaghs*, the *Byrns*, Father and Son, and *Joshua Barton*; for as to Colonel *Pigot's* Evidence it is nothing; however, since the Gentlemen of the other Side have mentioned it, I shall observe that he only said, that he heard there was a Bruit of my Lady's having a Child; but with Submission, my Lord, I conceive clearly that in Point of Law that Hearsay is not Evidence to go to a Jury. I humbly contend then, that this Reputation, if it has any Weight at all, it is controled by positive Witnesses on our Part, and by a number of Persons who declare the Reputation to be otherwise, both at *Kinnea* and *Carrickduffe*; and there is one Witness, Mr. *Medlicot*, who is so particular as to the Discourse, that he tells you

the very Words, and that Discourse corresponds so exactly with the Character of my Lord *Altham*, that, for my own Part, I have no doubt but such Words were spoken by him; the Words he said were these, *That he hoped he should be one Day Lord Anglesey, but as he had no Son of his own, nor imagined that he ever should, he did not Care if the Devil had the Estate, or what became of it*; this, my Lord, is a very probable Declaration from my Lord *Altham*; it is sworn to by a Gentleman of undoubted Credit, and those Circumstances concurring together, I think no Body can at all doubt it. The World knows that my Lord *Altham* was a Man made Sales, as far as he could, of the Reversions of many Parts of the *Anglesey* Estate, and such as no Man would make that could be thought to have any regard to his Posterity: And this I observe, to shew your Lordship and the Gentlemen of the Jury that he did not look upon himself to be a Person having, or likely to have, an Heir to that Estate. Mr. *Harman* is also expresse to my Lord's Declaration at *Kinnea*; and those Persons were in such a Degree of Intimacy with my Lord, that it is impossible he could have a Son by his Wife, and they not know of it. At *Carrickduffe* too, there is Evidence of the same Kind; but then it is alledged, that when he came to live in *Frappier Lane*, the Child appear'd as my Lord's lawful Son by his lawful Wife; and this depends upon the Evidence of *John Byrne*, *Thomas Byrne*, and *Patrick Plunkett*. With respect to *John Byrne* the Father, I think little Weight can be laid upon what he says; he tells you, that he had no Acquaintance with my Lord, and it happens, by the Son's Account, that Mr. *John Byrne* lived in the Country at the Time my Lord lived in *Frappier Lane*. Then, what Stress can there be laid upon what has been said by Mr. *Thomas Byrne*? He says, that he took Care of his Father's Business in his *Brewhouse*, and that this Boy used to come and sometimes lie with him, and that he was reputed to be my Lord's lawful Son, that he went once only into my Lord's House, and that my Lord treated him civilly: But there is another Part of his Evidence that is more particular, and when that is considered it is plain, that
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either he or another Witness for the *Plaintiff* must swear falsely; *Thomas Byrne* further says, that my Lord left *Frappier Lane* in *May 1724*; that in *Sept. 1724*, this Boy came to him in a most miserable Condition; that he took him by Stealth into the House, for Fear of his Father, and when he could not convey him into his own Bed, he used to lie in the *Hay-Loft*; and in this Way he was for six Weeks lodged and fed in this Manner by Charity and by Scraps of this *Mr. Byrne*; and *Thomas Byrne* goes further, and says, that this Boy afterwards became a Wanderer, and he knows not what became of him. Now, your Lordship will observe, that they produced two Witnesses on the Side of the *Plaintiff*, to shew that this Boy was in School in *Warburgh Street* with one *Mr. Dun*, there were *Mr. Waldron*, and the Schoolmaster himself; those Witnesses have told your Lordship, that this Boy was boarded at one *Mrs. Cooper's* in *Ship-Street*, and went from thence every Day to *Dun's* School, and that he was then reputed the Son of Lord *Altham*; *Mr. Dun* produces a Memorandum in Writing, which confirms him as to the Time that the Boy was at School with him, which was in *Sept. 1724*, and continued with him till *Easter* following. Then, with Submission, this *Dun's* and *Mr. Byrne's* Testimony are directly in Opposition to one another. *Mr. Dun* says, that the Boy was at his School from *Sep. 1724*, to *Easter* following; that he was called the young Lord, nay, that he several Times discoursed with my Lord *Altham* about him, and as to the Care he took of him, and that my Lord promised to reward him. *Mr. Byrne* tells your Lordship that in *Sept. 1724*, this Boy came to him in a very wretched Condition, and that he took Care of him for six Weeks after, and that he then became a Wanderer. I know not how these two Stories can both be possibly true; and therefore I hope the Gentlemen of the other Side, if they would have any Credit given to this Part of the Testimony given on the Part of the *Plaintiff*, will, if they can, reconcile these Differences between their Witnesses, and shew on what it is we are to fix our Judgments. But I must further observe, that notwithstanding all the Kindness
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and Care which my Lord *Altham* is said to have shewn to, and taken of this Child, his subsequent Behaviour amounts to ten thousand Demonstrations that the Boy was not his *lawful* Son, nor so considered by him. It is a Thing inconceivable in itself, that a Man who had a Child by his Wife, which he for some Time had taken proper Care and seemed so fond of, should at once throw him off without some gross Vice or Misbehaviour in him, which has not been even alledged of the other Side, and should desert him at the Age of eight or nine Years old, at an Age when a Child can do nothing to make a Parent forget the Ties of Nature and Affection, and all the Obligations of Duty. It is a thing not possible to be believed, that my Lord *Altham* would at such an Age, or for any Offence which he was then capable of committing, turn his only Child out of Doors into the wide World, to become a *Beggar* and a *Vagabond*. Can such a Behaviour be conceived of any Man living of common Sense, Goodness, or Humanity? It is very easy to be conceived in the Case of a *natural* Child, where there must be always some Distrust, whether he was really begot by him or not. Here is a Boy that I imagined to be mine, begot by a common Woman, probably I might not know at that Time how common she was, but if there should afterwards arise Doubts in my Mind, and I should have Reason to believe that Boy was not mine, if he does not, from some good Behaviour, engage my Affection I will discard and abandon him; under such Circumstances, I may easily be brought to say my Care of this Boy is to no Purpose, that he has vicious Dispositions, and that I will turn him out and set him adrift; but in the Case of a *legitimate* Son, and only Child too, and a Child of such tender Years as not to have given the least Handle for any cruel or unkind Treatment, it is impossible to conceive any Parent can be so cruel, and so abandoned, even with respect to his Character, as to act in such a Manner. But when it is considered, that it was so far from being an Advantage to my Lord *Altham* to make this Child's *Legitimacy* doubtful, that it was the Thing in the World most for his Benefit that all Mankind should know
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and be fully persuaded that he had a Son by his Wife, this Hardheartedness will appear still more monstrous and incredible. By the Wills and Codicils of *James* Earl of *Anglesey* Lord *Altham* was Tenant in Tail of the *Anglesey* Estate. The Will made *May* 24, so limits it, and *Arthur* Earl of *Anglesey*, at that Time, had no Son, or Prospect of ever having any; he outlived Lord *Altham*; so that Lord *Altham* could not, by any Act of his without the Concurrence of Lord *Anglesey*, bar this Estate in Remainder, so as to make a good Title to a Purchaser. But my Lord *Altham*, if he had ever so many Sons, could have barred them all by a Fine; the greater Number of Sons he had, the better Title he could make to such Persons as would deal with him for the Purchase of his Remainder; considering it therefore in this Light, Lord *Altham*, having a Son, must have greatly enlarged his Credit, and enabled him to sell for a greater Price to any Purchaser. But supposing that in fact my Lord *Altham* had only an Estate for Life, with a Remainder to his first and every other Son in Tail Male, I beg Leave to say, that even then it would have been of Advantage to him to have had a Son, or to have been thought to have one; because it would have gained additional Credit and additional Esteem. All the World knows, where there is a Prospect of great Honours and Estates descending to a Family, greater Respect is paid them; and the more Likelihood there is of the Continuance of that Family, the greater still is the Respect; and the Probability of his Son surviving of him, was a Circumstance of Advantage and Credit to my Lord *Altham* which he could not but know; and therefore it seems to be very clear, that if my Lord *Altham* had been the Father of a legitimate Son, he would not, at any Time, have disowned or discarded him, but would have been glad to have such a Son, and to have acknowledged him in the most public Manner. My Lord *Anglesey* died on the first of *April* 1737; and if at that Time my Lord *Altham* had been living, he and his Son, on his coming of Age, would have had it in their Power to have done what they pleased with the whole *Anglesey* Estate. The Knowledge and Expectation

tion of this was surely one of the strongest Motives, next to the Ties and Obligations of Nature, for my Lord *Altham's* taking the utmost Care of his Son, and treating him with that Tenderness and Kindness coming from a Father to an only, an unoffending Child: So that, on the one hand, it was manifestly a Disadvantage to my Lord, to have it insinuated, or made a Doubt of, that he had such a Son; and on the other hand, nothing could be more for his Benefit than to have it publicly known and understood that he had one. And let the Consideration, in Point of Law, be strictly in itself what it will, whether my Lord *Altham* was Tenant for Life, or Tenant in Tail, the Evidence of Mr. *Wall* is, that my Lord *Altham* took Council's Opinion upon it in 1725; and that he was advised he could have enlarged himself by a Fine, if he had had a Son. Now after this, although he had turned off this Boy for three or four Years, yet can it be doubted, but that a Man of his necessitous Situation, and of such Principles as he is represented to be, would have taken him up again even in 1725? If he had had any Notion that he could have imposed him on the World as *legitimate*, he would certainly, at least, have brought him home, and endeavoured to deceive Mankind about him, if he thought he had the least Colour for it; but his not doing this is the strongest Evidence in the World of his Knowledge that he was not his *legitimate* Son.

But there is another Circumstance, which is the most strong and convincing Proof that possibly can be, that no such Son was ever born, Lady *Altham* lived at *Ross* after her Separation from my Lord for 3 or 4 Years; she came from thence to *Dublin*, and lived here at the time that some of the Witnesses for the *Plaintiff* give your Lordship to understand this Boy was a *Beggar* and a *Vagabond* in the Street among the *Mob*. Lady *Altham* undoubtedly knew that Lord *Altham* had no Son by her, and did not, I suppose think herself under any Obligation to enquire after or take any Care of, his Child by *Joan Landy*; but yet as it is pretended that this Boy was sometimes owned by my Lord as his lawful Son, by his lawful Wife, it seems

seems very strange, that in all this Time, and whilst this Boy was in so miserable a Condition, there is not the least Proof of any Application made to my Lady *Altham* about him; except what *Catharine O Neill* tells you was made by her. My Lady *Altham* lived in this Town from the Year 1719 to 1724; for she went to *England* in September 1724; and during this whole Time, this Boy, who must now needs be his Son, is proved and admitted to be in the Condition of a *Vagabond* wandering about the Streets amongst the *Rabble*, and yet this Lady, in all the Conversation she had with her Friends and Acquaintance, never once mentioned that she had this Son, or took the least Care of him, nor ever said one Syllable about him, except what is pretended she said to Mrs. *Margaret Hodggers*; though the Story that this *Peg Hodggers* has told is in itself so improbable, that no Man alive can give Credit to it. This Woman, who is a *Letter of Lodgings*, tells you, she went up all at once to a Lady's Chamber, whom she had no sort of Acquaintance with, to tell her an idle Story about her Lodgings, and then she enters into a familiar Discourse with her; tells her that her Business over into *Ireland* was to look for Money that some young Gentleman owed her in *England*, and acquaints her that she had been in the Kingdom for a Year and a half, had taken a House with an Intent to let Lodgings, and that when she had agreed with some Persons to diet and lodge my Lady, she had received a *Pistole* in Earnest, which she afterwards returned; upon which my Lady wished her better Luck than she had had in the Kingdom; and told her the History of her Misfortunes; and when she had done, Mrs. *Hodggers* abruptly asks her Ladyship if she had any Children; my Lady replied, *yes, I have one Son*, and so she gets up, makes a *Curtesy*, goes away and has no farther Conversation. This, my Lord, is the only Evidence of my Lady's Declaration that she had a Son; and it is contrary, I think, to all Probability in itself; contrary to the whole Nature of this Transaction, and not to be credited; for this Woman does not pretend to say, she ever saw or knew my Lady before or after, or that in Fact this was the Lady *Altham*. But when your Lordship and the Gentlemen of the Jury shall

shall consider the Evidence of Alderman *King*, in whose House my Lady lived 14 Months, just before her going out of the Kingdom, that he had frequent Conversations with her about her Situation and Affairs, was in great Intimacy and Familiarity, that she dined constantly at his Table, and yet never heard her mention any thing of her having a Child, and for that reason believed she had none; the Evidence, I think, of this Gentleman, of undoubted Credit, must add great Strength to what has been proved of my Lady's never having had any Child by my Lord *Altham*; and the rather, that no kind of Evidence has been produced, that my Lady during the whole Time she was at *Ross* after their Separation, or during the whole Time of her being afterwards in this Town, ever mentioned or spoke of such a Child to any Person, or made the least Inquiry for or about him. Alderman *King* says further, that Mrs. *Heath* was with my Lady all the Time she was in his House, and that she was an extreme well behaved Woman while she remained in his Family; I observe this, to shew that this Woman deserves Credit; but this is further corroborated by the Testimony of Mrs. *Elizabeth McMullen*, an intimate Acquaintance of my Lady's, and one that attended her for a Month constantly during her Illness; and yet in the whole Course of her Acquaintance, she never had the least Reason to believe or imagine that she had a Child. Then, my Lord, be pleased to consider that Circumstance of my Lady's being apprized of my Lord's Death, immediately, or very soon after it happened; which I think is of great Weight in this Case. It seems, that Mrs. *McMullen* was the Person appointed to give my Lady Notice of my Lord's Death, whensoever it should happen. She swears, that immediately after the Burial of my Lord *Altham*, she wrote a Letter acquainting her of his Death and Burial. Mrs. *Heath* produced the Letter, and it is dated Nov. 18th 1727, and she swears, that she communicated the Contents of it to Lady *Altham* as soon as she read it, this, I must observe, was two Years before my Lady's Death. The Gentlemen of the other Side indeed would have insinuated, that it was not at all surprizing that my Lady

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took no Notice of her Son upon my Lord's Death, for that she had then lost all Memory and Understanding. I think Alderman *King* told you the contrary; Mrs. *Heath* swears also to the same Purpose with him; and there is no Sort of Reason to doubt but that she retained her Memory and Understanding to the Day before she died. Your Lordship will be pleased to recollect, that my Lady, while in *England*, was supported by the Duke and Duchess of *Buckingham*, and was then in such a Situation, that if she were conscious she had had a Child, she could not fail to have Friends to have asserted the Right of that Child; nor can it be imagined, that a Woman, unprovided for as she was, would not have applied for the Guardianship of such a Child, if there had been one, which by Law she was undoubtedly intitled to, and which would have been of great use to her in her Circumstances at that Time, considering how liberal Courts of Equity are in Allowances for the Maintenance of an only Son, where the Mother may want some Helps for her Support. And yet for two Years after my Lord's Death, which was the whole Time she survived him, there is not the least Evidence to shew she made the least Mention of her having a Child, but on the contrary, the only credible Testimony is, that she never had one, nor ever was with Child, or ever said one Syllable about it. This, in my Apprehension, is so plain, and seems to me to be supported by such clear convincing Testimony of our Side, that, for my own Part, I have no doubt, and hope the Gentlemen of the Jury will have none, that the whole of this Pretence on the Part of the *Plaintiff* is a mere *Sham*.

I shall now, with your Lordship's Favour, beg Leave to take notice of two Things, which I presume have given Occasion to this Suit; the one is the supposed Story of transporting this Boy, and the other the Prosecution at the *Old Baily*, after he came into *England*; and I take upon me to assert, if these two Circumstances were out of the Case, and they are Matters quite foreign to the Matter of the Birth, it would not stand a Moment's Debate in any Court of Justice. But, my Lord, Gentlemen

lemen are not to ground their Opinions of this Matter of Fact, upon which the Question this Day solely depends, upon any Misconduct of the Defendant ; their Judgments must be founded on the Proof made of the Fact itself ; and all the Evidence given, not relative to that Fact, and all Suspicions to be drawn from such Evidence are to be rejected, being the weakest Guide a Man can go by. Whoever governs himself by Suspicions, in his Judgment of Things, will naturally fall into Error ; and though Evidence of Misbehaviour in the Defendant must create a Dislike of him in the Minds of all Men that give Credit to what is sworn against him in that respect, yet nothing else can be drawn from that but a bare Suspicion that he looked upon him the *Lessor* of the *Plaintiff*, as a Person capable or disposed to give him great Trouble or Disturbance. But where a Fact appears by the fullest and plainest Evidence to be quite otherwise than from these Suspicions, grounded on other Facts, Things are at first presumed to be, those Suspicions ought to have no Influence in determining a Case of Property ; a Case of such great Importance and Consequence, and which must affect many Persons concerned and interested, who stand clear of all Manner of Reproach or Imputation. God forbid, that Popular Clamour or Prejudice should guide or govern in such a Case. The first Imputation laid to the Defendant is that of the *Transportation*. I think I shall be able to shew your Lordship, that this Charge, like many others, against the Defendant, has been cooked up and improved, and a formal Tale made of it, principally to captivate and divert People from attending to that which is the true Fact to be tried in this Case ; but the Tale is false, and not at all proved in the substantial Part of it, which is, that my Lord *Anglesey* transported the Boy. As in the *Plaintiff's* State of the Case relating to the said pretended Birth, the Gentlemen of the other Side did not think it safe to go directly into Evidence touching that Point, without introducing many Circumstances and Facts, both previous and subsequent to it ; so in this of the *Transportation*, the Proof the Fact itself was not thought proper to be relied on, but they introduced it by applying Evidence to the Proof

Proof of Particulars of another Nature, that happened, as they say, before he was transported; one of these is an Attempt upon the Boy before the Time of the Transportation, and this is sworn to by one *Dominick Farrel*, a Person of great Dignity, according to the Appearance he made upon the Table; he swore positively to Facts which in themselves appear to be notoriously false: He sets out with giving an Account of his Acquaintance with my Lord *Altham*, his Visits to him in the Country, the Civilities he saw my Lady shew to this Boy, and her treating him as her Child; his Business there, he says, was to call in a Debt contracted about two or three Years after 1715; but supposing that, in Truth, my Lord did owe this Man Money, and that the Debt was contracted in the Year (15) and that he went, as he says, to demand it in the Year (17) or (18) yet the subsequent Part of what he swears no body can believe, for it is admitted of all Hands, in this Case, that the Separation was in (16) and that my Lady was never after at *Dunmaine*, and yet this Man swears positively he saw her at *Dunmaine*, and saw this Boy there with her, and that he was the Favourite both of my Lord and my Lady, and all this is in the Year (17) or (18.) What is this Man to do next? Why he is to shew how this Boy came into the Hands of Mr. *Purcell* a Butcher; who is not to Pick him up by Accident, but *Dominick Farrel*, a Man of his Importance, is to recommend him to *Purcell* as the real Son of Lord *Altham*, and this *Purcell* is to take Care of him as my Lord's real Son, out of meer Humanity. The Account *Farrel* gives is, that he was in *Smithfield* and saw the Boy on the Back of a Horse, and then called to *Purcell* and said, pray look at that Boy there, would you take that Boy to be the Son of my Lord *Altham*, I affirm to you he is, and I know you and your Wife to be good natured People, and I recommend to you to take him Home and succour him, and that you may be sure what I tell you is true. I'll step aside till you call the Boy and ask him; though by the Way, I must observe to your Lordship, that *Purcell* swears positively the Boy was talking to *Farrel* when *Farrel* first came up and mentioned the Thing to him; this Variation, I own, is but

but of little Moment, but it shews that Falshood is ever inconsistent. Then, how is it probable or credible, that this *Farrel* should be intrusted by my Lord *Altham* to take Care of this Boy, that my Lord should say to him, be so good as to add to this Debt I already owe you, by getting this Boy Food and Raiment? I'll pay you. That is, I can't pay you what I now owe you, but make the Debt greater and then I will. Then *Farrel* takes the Boy to his House, but for fear of his Wife he is obliged to turn him out of Doors, that also is unlikely; but what takes from his Credit is this, that he was a Bankrupt in this Town, and went from hence to live in *Cork*, and he swears it will be eleven Years next *Christmas* since he went to *Cork*; he was also sure that this Boy was with *Purcell* for a Year and a half before he went to *Cork*, and was with him after he, the Witness, went to live there. Now, it is clear, upon the *Plaintiff's* own Evidence, that he went to the *West-Indies* in the Year one Thousand seven Hundred and twenty eight, where he has remained ever since, till lately; and yet by *Farrell's* Testimony, he must have been here in 1732, and for a Year and a half before; but if *Farrel* be not to be credited, as I think clearly he ought not, that must induce a Blemish upon the Testimony of *Purcell*, who is produced to the same Transaction. I beg leave to say, that *Purcell's* Testimony shews that what he has said relating to this Boy is, at best, extremely improbable; for after he had taken the Boy home to his House, he was so far from treating him as the Child of a Nobleman, or indeed a Person of any Figure, though of less Rank, that he appears to have treated him as a Servant, sent him frequently of his Errands, so that the Boy called the *Butcher's* Wife his *Mistress*, and that no Mention was made by this *Butcher* to Lord *Altham* that this Boy was in his House, nor indeed any Application to any Body who might inform either my Lord or Lady *Altham* of a Matter that so nearly concerned them.

Purcell swears to an Attempt made to take this Boy from him by force: And says, he had Reason to expect future Attempts of the like Kind, and yet it appears, from his own Mouth, that he took so little Care of this Boy,

Boy, soon after that Time, and after he knew that Lord Altham was dead, that he suffer'd him to leave his House, and never made an Inquiry afterwards, or ever gave himself any further Trouble about him. It can't be imagined, that after this pretended Attempt of taking the Boy from him by force, he should never after the Boy had been gone, and, that in a very short time too after the Attempt to take him away by force was made, make any Inquiry for, or shew the least Solitude about him. This Part of *Purcell's* Evidence is not easily to be accounted for. I think it shews plainly that there is but one true Way of reconciling all this, and that is, that this Boy, from the Time he could go about, was a *Wanderer* about the Streets of this Town, and was picked up by one body or another, and had some little Money or Victuals given him for his Service, and might have come this Way into *Purcell's* House; for that he kept him as his Servant, appears from his own Expressions, the Boy called him his *Master* and his Wife *Mistress*. *Purcell* owns, that this Boy sometimes lay abroad out of his House, and it seems that from his natural Disposition, or a bad Habit, he was so given to rambling that he could not tarry long in any Place: He went away from *Purcell* by Stealth, and that very Instant becomes a *Wanderer* and *Beggar* again. *Purcell* says, he stay'd with him for two Months after the Attempt; and Mr. *Tighe* says, he came to live with him in the *March* after; but he did not, it seems, remain long with Mr. *Tighe*; and his going away from them was also by Stealth; and that after he left Mr. *Tighe's* he becomes a *Vagabond* about the Streets again. And can any body believe it is at all probable, that if the *Defendant* had any Intention to transport this Boy, that he could not readily have done it without any Bustle or Squabble with the said *Purcell*—or any other? So that this Story of the Force has not even the Appearance of Truth. And now, my Lord, I am come to the *Transportation* of this Boy, which, by the Testimony given by some of the Plaintiff's Witnesses, is sworn to be the Act of the *Defendant*, the present Earl of *Anglesey*; but which I think is equally improbable with the rest. *Mark Byrne* the *Setting Constable*, who is the principal Witness

Witness to this Point, says, that one *Donelly*, another Constable, and he had the Boy at *Jones's* House in the *Market*, at Noon-Day. That the present *Defendant*, who was then Lord *Altham*, was there in his usual Dress, that they carried the Boy away in Day-light, by the very *Stall* of *Purcell* in the *Market*; the Boy all the Way wringing his Hands and crying that his Uncle was going to transport him, and yet no one Attempt was made to rescue or save him, nor was one Word said by any one to prevent the Distress of this Boy; this Part of the Story surely no one living can believe. For though my Lord *Anglesey* could be supposed capable of so black and wicked an Act, yet I think no Body can believe he was such a Fool as to transact it in this publick Manner, in the View of all Mankind. This Constable tells you, that he left my Lord at *Jones's*, that they took a Coach at *Essex Bridge*, and swears, that in less than a Quarter of an Hour my Lord was in the Boat with the Boy, and he saw him carried off, and gives an Account only of one of the *Donelly's* being in the Boat, and that he, the Witness, went last into it. Then there is another Part of this Evidence which your Lordship and the Jury will be pleased to observe, which is, that *Mark Byrne* swears they were not above an Hour at *Jones's*, that they went from *Essex Bridge* in a Coach to *George's Key*, that my Lord follow'd them, and in a Quarter of an Hour the Boat went off; that the present Lord *Anglesey* was there in his ordinary Habit, and went into the Boat with the Boy. I now beg leave to take Notice of Mr. *Reilly* he swears he found my Lord at *George's Key* when he came there, that he was sent to borrow a *Guinea* of Mrs. *Kelly* at the Sign of the *Butcher's Arms* beyond *Inchicore*, which is near three Miles from *George's Key*, that he went and borrowed the *Guinea*, and return'd, and gave it to my Lord in an Hour and a Quarter, and that my Lord gave it to *Donelly*, the Constable; who went into a House to bring out the Boy; that my Lord followed him out of the House, and met him with the Boy at the *Slip*, and they went into the Boat; the Manner in which he describes the going into the Boat is this, that my Lord
went

went into the Boat, then the two *Donelly's* and the *Child*, then two Persons that he did not know, and he himself went last. Your Lordship may remember, that I mentioned very often to him the Name of *Mark Byrne*, and though he was asked over and over, he said there were none in the Boat but those I have mentioned. Now, I say, it is not possible that both these Persons can swear Truth; for if you believe *Byrne*, there was not a Quarter of an Hour's Space of Time after they came to the *Quay* before he saw the Boy go off. *Reily* swears, my Lord was on the *Quay* before he first came to him, and that he left my Lord then, and went to borrow the *Guinea*, and was an Hour and a Quarter before he return'd; so that there must be a Delay of at the least an Hour and half some way or other. I say then, that these two Persons, who go to the same Transaction, can't possibly be both believed. And if your Lordship can't believe them both, it is very hard to give Credit to any one of them. The next Circumstance is the *Kidnapping* itself, and that, my Lord, in the Manner it is attempted to be proved, is, I think, impossible to be believed; it can never surely be imagined that any Man in his Senses should go in broad Day-light, in his ordinary Dress, without any Disguise, and in the open public *Market-place*, commit an Act which he knows to be highly criminal, and such a Crime as he might upon the Spot be committed for, and at least five hundred Persons to give Evidence against him; but this being a Part of the *Plaintiff's* Evidence that could not be supposed to make any great way, they then had recourse to the Books of *Mr. Stevenson*, who is dead, Books which, in my Apprehension, are the strongest Evidence to disprove this Charge of *Kidnapping*. *Mr. Crome*y, who was *Mr. Stevenson's* Clerk, proves those Books; he has told you, my Lord, that he liv'd with *Mr. Stevenson* for 13 Years, that *Mr. Stevenson* was a very honest Man, and carried on this Trade of sending *Slaves* to *Pensylvania* for several Years, and he swears, that he neither knew nor believed that, in all that time, any Person was sent away without being *indentured* at the

Tholsel Office. He has given you an Account of the Nature of this Trade, that Advertisements were posted up in the *Tholsel*, and other public Places, signifying that such a Ship was to sail at such a Time, upon which the Persons, who designed to go, came and were kept in a *Warehouse* till they were *indented*, and underwent an Examination before my *Lord Mayor*. Now, it appears, that in this Book of Mr. *Stevenson* there is the Name of *James Annesley* entered as one of the Persons that went as a Servant on board this Ship in *April 1728*. In the Books of the *Tholsel* there appears to be a Person *indented*, about the same time, of the Name of *James Annesley*, it is there wrote *Hensley*; the Name of *James Hensley* is not in Mr. *Stevenson's* Books, and yet no doubt can remain but that some Body of the Name of *James Hensley* was *indented* to go on board this Ship for Mr. *Stevenson* from the Entry in the *Tholsel* Book. The Names are very near in Sound, *Herford* is call'd *Harford*, *Henderfon* is call'd *Anderfon*, it is a common way of pronouncing; the Sounds are the same, and a Mistake in the Spelling might easily happen by the *Tholsel Clerk*. The Gentlemen of the other Side seem to lay a Stress upon this Mistake, and would construe it a Design in the *Defendant* to conceal this Boy's being sent aboard; but no such Inference can, with any Justice, be made, when it is considered that all Persons of such tender Years, who are *indented* at the *Tholsel*, go there in an open public Manner, and are examined there publicly by the *chief Magistrate* touching their Parentage and Condition, and particularly, whether their going on board is voluntary and free, and an Act of their own Choice. Could this Boy be *indented* at the *Tholsel* without such a public Examination? No, the Gentlemen of the other Side don't pretend to say he could; and can a Thing so publicly transacted, be called *Kidnapping*? No Man living can say or think that the Name of *James Hensley* was inserted in the *Tholsel* Books by any Deceit or Corruption of the *Clerk* or the proper Officer employ'd there to make those Entries. The Name is *James Annesley* in Mr. *Stevenson's* Book, and if that had

had been sent to the said *Tholsel*, to have the Entry in the Books there made according to it, then the Difference in the Spelling might with more Reason be objected, but it appears that the Merchants Books are never carried there, but the Persons themselves go and give in their own Names to the *Clerk*, which being often done in Haste, might very naturally have occasioned the mis-spelling of the *Surname*, yet still preserving the Sound and Termination of it. If there had been any private, corrupt, Dealing between the *Defendant* and Mr. *Stevenson*, with respect to this, would Mr. *Stevenson* ever have entered the Name of *James Annesley* in his Books? What need was there to insert into the *Tholsel* Books the Name of *James Hensley*? The plain and natural Construction of this Mistake surely is, that this Person mentioned in the *Tholsel* Books, is the same Person that went over and is mentioned in *Stevenson's* Book to have gone by the Name of *James Annesley*; for as *Annesley* is not in the *Tholsel* Book, so is not *Hensley* in *Stevenson's* Book, and as it appears, that this Boy was for some Time before a *Wanderer* about the Streets, the Probability is, that such a low idle Course of Life might have at last become odious to him, and that he had a Desire to quit it and try his Fortune abroad, and so transported himself.

There is but one Thing more I shall trouble your Lordship with, that is, the *Prosecution* in *England*, and this comes into this Case from the Testimony of Mr. *Giffard*, a Gentleman of Business, an *Attorney* of the *Common Pleas* in *England*, who was, he says, employed by my Lord *Anglesey* to carry on that Prosecution: He appears here voluntarily, without any Summons; he comes from another Kingdom, where he was out of the Reach of the *Process* of this Court; and he comes to disclose what passed between him and his Client; all which, I suppose, does not intitle him to much Credit. I don't say, but that if a Man is brought by compulsory *Process*, if he is forc'd, when upon his Oath, to answer, and thereby to disclose a Matter which he would not otherwise willingly do, in such a Case he may possibly be

excused to the World for disclosing, or rather betraying private Conversation, or Matter communicated to him in Confidence; but that he should come voluntarily to do this, shews him, in my Apprehension, to be no good Man: He has shewn himself in his Examination upon the Table to be an angry, provoked, and prejudiced Witness, and thus was brought hither to serve a Turn, and to do my Lord *Anglesey* all the Mischief he can; and he gives this Reason for it, That my Lord *Anglesey* refused to pay his Bill of Cost. This shews, that what he has sworn arises rather from Resentment, than from any Truth in the Facts he has sworn to. The Story which this Man relates of the several Conversations of my Lord *Anglesey* with him, many of which have very little Relation to the Matter properly in Question on this Trial, are quite incredible. Can it ever be believed, that the *Defendant*, my Lord *Anglesey*, should want only, and without any Provocation or Reason say, I would give 10000 *l.* to have the *Plaintiff* hanged? However wicked his Mind might be, he could never be so great an Idiot as to speak in that Manner to any Man alive. But suppose he had, who can possibly imagine he would afterwards, for two or three hundred Pounds, fall out with the Person to whom he imparted so dangerous a Secret: A Secret that might affect his Life, his Estate, and his Honour: But this, like many other Parts of the *Plaintiff's* Evidence, seems to me to be grafted upon that which probably might be the real Fact, and like the rest has been improved and heightened, in order to throw Dirt and Calumny; which I own has been done by the Managers for the *Plaintiff* very plentifully, and with great Art; and the Weakness of their Case has been hitherto propped and supported by such like Arts: But if the Fact with Respect to this Prosecution was true, as related by *Giffard*, I beg Leave to say, that as no indirect Means were to be used in it, which is acknowledged by *Giffard*, there was no Crime either in directing or assisting such a Prosecution, nothing being criminal, in such a Case, unless undue or improper Means were made use of in the carrying it on. But suppose

pose a noble Lord involved in Difficulties, engaged in many *Law Suits* with his own Family; first one Part of his Estate, and then another wrested out of his Hands, by his own near Relations, who should naturally have preserved and assisted him; and that a Man so situated should say in his Passion, why I would rather any *Annesley* alive should have my Estate, than these People who are in Law with me; I will go even to such a Man, and accept of 2 or 3000*l.* a Year from him, and live in quiet in a foreign Country, rather than be plagued and perplexed at this Rate; surely such a Declaration, if any such had been really made, can never be looked upon in any other Light, but as an Effect of Passion and Resentment. The Gentlemen on the other Side have drawn a Suspicion from hence, which, in my Apprehension, cannot be collected from the Thing itself, and at the most is Suspicion, which never governs any but weak Minds; and it can possibly have no Weight where it is encountred and destroyed, as it is in this Case, by a Number of concurrent Witnesses examined on the Part of the *Defendant*. There is but one Thing more I beg Leave to take Notice of before I conclude, and that is, the Management and Contrivance of the *Plaintiff*, in endeavouring to deprive the *Defendant* of the Testimony of his most material Witnesses in this Case. What else was meant by the Bill filed against Mrs. *Heath* for the Effects of Lady *Altham*, who, all the World knows, after the Separation lived and died in a very bare Condition? Was it not the plain Design of that Bill, to hinder Mrs. *Heath* from appearing here before you? The Attempt made upon *Rolph* by Mr. *M^cKercher*, of which *Rolph* has informed you, is another Instance, that nothing was left undone to prevent the declaring or disclosing of the Truth. Sir, will you accept of a *Lieutenancy*? No, I can live better as I am. And then, after, Sir, did I proffer you a *Lieutenancy*? No, you ask'd me if I would accept of one; and I told you I would not. Is it not evident, that this was done with Design, either to hinder *Rolph* from appearing for the *Defendant*, or to induce him to swear in Favour of the

Plaintiff? I hope your Lordship and the Jury will pardon me for having taken up so much of your Time: But in such a Case as this is, there is no fencing against determined positive Oaths of Persons that take upon them to be Eye Witnesses of what they were sworn to, but by Circumstances; and no Man living, be he ever so innocent, and his Right never so just, can in a Matter of this Kind be secure against a Knot of enterprizing determined Undertakers and Witnesses; it is from their Inconsistences, and Contradictions of such Witnesses, in minute as well as other Circumstances, that he can hope for Safety; I have mentioned such of these already as have made the strongest Impression on my Mind, during the Course of this long Trial; and yet I am sensible I have omitted many others which are very material: But the Gentlemen who are to speak after me will take Notice of them, and lay them in a more proper Light before your Lordship and the Jury. But, my Lord, I cannot conclude without putting the Gentlemen of the Jury in mind of the great Danger that attends the Property of every Man in the Kingdom, if Pretences of this Sort receive any Countenance. What Family can be safe, if the Care of a *natural* Child should receive such a Construction as the Council for the *Plaintiff* now contends for; if such Circumstances of Kindness in the Hands of an artful Man, worked up and improved into Evidence, come to have any Weight in a Question of this Kind, there is an End of all Certainty in Successions of Estates and Honours, and a Door opened for infinite Perjury. There is but one Way to come at the Truth in such a Case, which is to enquire and closely to examine into the Foundation and adhere strictly to it, and if that be not found, the Building cannot stand. I submit therefore to your Lordship's Consideration, that as the Evidence of the pretended Birth is not made out or supported by any credible or rational Testimony given for the *Plaintiff*, but is fully contradicted and destroyed, not only by the Testimony of the Witnesses produced for the *Defendant*, who are Persons of undoubted Credit, but also by and from the Nature of the Thing itself,

itself, and the Circumstances attending this Family, both before and since the Death of my Lord *Altham*, your Lordship will direct the Jury to find for the Defendant; which I hope they will, for the sake of Justice, and to give all proper Discouragement to so bold an Attempt as this is on the Part of the Plaintiff.

Mr. SOLLICITOR-GENERAL, for the Defendant.

My Lords, and Gentlemen of the Jury,

I Am of Counsel on the same Side with Mr. *Prime Serjeant*, and he has gone so particularly through the Evidence, and with so much Advantage; that it will save me a great deal of Time and Labour in speaking to this Case; I shall therefore confine myself to some Particulars, not indeed of the greatest Moment, yet necessary to be mentioned, which have escaped him: And if I shall happen at any Time to mention any Particular the *Prime Serjeant* has touched upon, it will be with a View of adding some farther Light or Weight to it, or in order to introduce and make way for some Observation not before insisted upon.

These are the Rules that I shall prescribe to myself, and endeavour to observe, in speaking to this Cause, perhaps of the greatest Moment that ever was tried in a Court of Justice in this Kingdom, and a Stake of the greatest Value that ever was in the Disposal of any Jury before. I shall just mention the Method that has been taken to assert and support the *Plaintiff's* Title, and the Method that has been taken by us to defeat, as far as in us lies, this Attempt.

I would put you in mind, that my Lord and Lady *Altham* were early in their Lives married together, that they cohabited long in *England*, not only without having any Child, but without the Appearance, or even Expectation of any. That this was succeeded by a Separation for some Years; and that in the Year 1713, they were re-united in *Ireland*. This will account for the

way they have taken to lay some Foundation of Credit for their Evidence, and obviate a Difficulty that might very reasonably occur, by setting out with shewing, that she who had not appeared to be a fruitful Woman in the younger Part of her Life, and in the first Years of their Marriage, became so immediately upon their Re-union; and, in order to make this, and what is to follow, the more credible, she is soon after their coming together made to miscarry at *Dunmaine*. Now, I will beg leave to take notice how that is proved, and it stands solely upon the Credit of Mrs. Cole, a single Witness to this Point; let it then be considered what are the Circumstances. As to this Fact upon her own Evidence, they are these. This House of *Dunmaine*, it seems, was, before my Lady's coming to it, not a regular House, and there was in it a Set of *China* that had indecent Figures upon it: Upon my Lady's coming to *Dunmaine*, my Lord gave Orders that that *China* should be put up, and never appear again. Why; what happen'd? A Sawcer of this *China* is brought one day to the Table; and my Lord, to shew his Indignation against the Butler, throws it at his Head. Mrs. Cole on her first Examination, said that my Lady was very much frightened; but, on her second, that she was very much displeased and offended at it. You will observe not only this Variation in Mrs. Cole's Evidence, but the Improbability of it. Why should my Lady be displeased, why offended, why affrighted? What was done, was done out of Respect to, and Delicacy towards her. My Lord's Indignation was not against her, but in her Behalf; the Blow not levelled at her, but at the Butler, for doing what, if she had observed, might justly have shocked and offended her. Yet, says Mrs. Cole she was so offended, that she would not come to supper that Night; so frightened, that it probably occasioned this Miscarriage. Then let us see what farther Account this Lady gives: She says she was at that time between 12 and 13 Years old, that in the middle of the Night Mrs. Heath, my Lady's Woman, comes into the Bed-chamber where she lay with her Mother, and says my Lady is unwell; and, what is observable, is, that she only

only said in the general that she was unwell, not what particularly ailed her, as it was natural and likely she would have done, if it had been a Miscarriage, or an Apprehension of one. Upon this Mrs. *Briscoe* the Mother gets up, and after some short Stay comes to Bed again, and tells her Daughter my Lady had miscarried, and she next Morning sees the *Miscarriage* in a *Basin*, as it stood upon a Table in my Lady's Room. Surely this is very odd, if there had been any such thing as an *Abortion*, that it should stand in a *Basin* open to the View of every body: She is, as I have already said, but a single Witness, and her Evidence is under this farther Disadvantage, that this Miscarriage was never heard of by any body else of the Neighbourhood; nay, of the House, in which it is said to have happened.

The next Miscarriage is said to have happened in *Dublin* in *July 1714*, and witnessed by Mrs. *McCormack*, then a Servant Maid at Mr. *Vice's*, where my Lord and Lady lodged.———She tells you Gentlemen, that a Quarrel happened between my Lord and my Lady's *Woman*; that my Lady was so frightned, that my Lord apprehended she would miscarry; that he came to the Stair-head, and would have sent a Servant for Mrs. *Lucas* a Midwife, whose House was almost opposite to Mr. *Vice's*; that she (the Witness) prevented the Servant's going, (but for what reason, if she thought my Lady really like to miscarry, is hard to say;) and when the Servant (who pretended to have gone) told my Lord, he could not find Mrs. *Lucas*, my Lord was in such Agony and Impatience, that he threw open the Window, and called aloud into the Street for Mrs. *Lucas*; and the next Morning another Midwife, one Mrs. *Lawler*, was sent for, upon which they said my Lady did miscarry. And this is the Account she gives. On the other hand, Mrs. *Heath* says there was a Quarrel at this time at Mr. *Vice's* between my Lord and Lady, as there frequently were Quarrels between them: My Lord in his Passion swore he would turn her off; but before he would do it, he would have Mrs. *Lawler* a Midwife, to see if she was with Child; and this, in order to prevent, as he said,

her laying a Child upon him, begot after the Separation, But that after this, which happened about Bed-time, and after my Lady was gone into Bed, my Lord went into Bed to her, and next Morning the Quarrel was forgot, and the Separation no more talked of. There was for this Story this little *Root of Truth*, and out of it has grown this vast *Branch of Falshood*.

But now this Lady has got into a Course of Fruitfulness, and in *November* following, is not only with Child, but big with Child; and this is so observable, that Mrs. *Bates*, an ordinary Servant in an ordinary House, observing it, wishes her Ladyship Joy, and lays her Hand upon her Belly. You've heard that my Lady was a very high Woman, and yet this Kind of Woman takes this Liberty, uses this Freedom with her. I say nothing of the wonderful Reformation this notable Person observ'd in my Lord's Conduct on my Lady's becoming with Child. I must not here pretermitt the Evidence of Mrs. *Blake*, a Witness produced by the *Plaintiff* in support of Mrs. *McCormack*, and Mrs. *Bates*. This Lady's maiden Name was *Annesley*, and she was a very near Relation to Lord *Altham*; which Particulars, in order to the giving a greater Weight and Credit to her Testimony, were opened, with great Solemnity by the *Plaintiff's* Counsel. But, instead of answering the End for which she was produced, she declared that she was almost every Day at Mr. *Vice's* during the Time my Lord and Lady lodged there, and extremely intimate with them both; yet she never heard that my Lady had miscarried, or been with Child whilst there; to which she added, if either had been, it was impossible she should not have heard and been acquainted with it. The Force of this Evidence shews itself, and needs no Reflections or Enlargement upon it.

I now come to the Business of *Dunmaine*, and if ever a Birth ought to have been well witnessed, and should have had the Attestation of the better Sort of People, this Child's ought. Where did it happen? In a Country well inhabited, near *Ross*, a Town of considerable Trade, and a Town which was then the Estate of Lord *Altham*.

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What Child was it? A Child not only born Heir to the Estate and Title of *Altham*, but in all Presumption to the high Titles and vast Estate of the *Anglesey* Branch of that Family. Who were the Witnesses to the Birth of this Child? Why, truly, *Mary Doyle* and *Elenor Murphy*; the one, according to the Account they gave of themselves, a *Chamber-Maid*, and the other an *under Laundry-Maid*. Every thing should be proved by Proof proper for it; greater things by greater Persons, smaller things by smaller Persons. But it is the less requisite to dwell upon this, because I take it to be clear, that neither of these People could have been in the Service, or lived at *Dunmaine-House*, at that time (if ever they did) and I believe they never did. For *Mary Doyle* said she lived in the House when my Lady first came to *Dunmaine*. Every body examined on either Side, has proved that *Rolph* was the Butler at that time at *Dunmaine*; if she had been there, she and *Rolph* must have been acquainted; they were confronted here, and were utter Strangers to one another; and all that she said to *Rolph* in the Conclusion was, you were never a Servant in that House at all: So that it is come to this, between these two Witnesses, which of them was, or was not, then a Servant at *Dunmaine*. And it is proved, by the concurrent Testimony on both Sides, that *Rolph* was a Servant and Butler there at, before, and after the Time of the supposed Birth and Christening of this Child; so that it is apparent that *Mary Doyle*, if ever a Servant at *Dunmaine*, was no Servant there at the Time she pretends she was. And there is another Circumstance which shews she was not, which is, that, contrary to all the rest of the *Plaintiff's* Witnesses, she swears *Joan Landy* was married at the Time the Child was put to her to Nurse. — That it was nursed at the House of *M'Cormack*, *Joan Landy's* Husband, in the Town of *Dunmaine*; whereas all the other Witnesses produced to this Fact by the *Plaintiff*, swear that *Joan Landy* was at that time unmarried, and that there was no Marriage between her and *M'Cormack* for three Years after, and that the Child was nursed at *Joan Landy's* Father's, who was Shepherd to Lord *Altham*, and

lived in a Cabbin about half a Mile distant from the Town of *Dunmaine* : So that *Mary Doyle* is evidently mistaken in these two Particulars, or all the rest are so. I shall mention another Instance, which is, that concerning Major *Fitzgerald* : *Mary Doyle* swears he lay a Night at *Dunmaine*, but the Major, that he never did ; so that in all these Instances she is falsified, and appears to be a made Witness. And then in respect to *Elenor Murphy*, it is apparent she is a made Witness.—She was twice examined — In her first Examination she said she was hired before, and was actually in the Service, when my Lady first came to *Dunmaine*, and staid there three quarters of a Year ; in her second Examination she said she was hired by my Lady after her coming to *Dunmaine*, at Mrs. *Buttler's* in *Ross*, where the Witness then lived, and that she did not come to *Dunmaine* till after the great *Eclipse* which happened the 22d of *April* 1715. — And the Child was not born till three Months after her coming. So that take her Account either one way or the other, it is plain she was not in the House at the Time of this Birth ; for if she went there in or about *December* 1713, according to her first Account, it is plain that she had left the Family near a Year before the Birth is supposed to have been ; but if she came there, as in her second Examination, which she says was not till after the great *Eclipse*, and that the Child was not born till about three Months after her coming, then it is evident that this Child, who is supposed to have been born the latter End of *April*, or Beginning of *May*, could not have been born, at soonest, till the *August* after.

There are two or three other Persons not mentioned by Mr. *Prime Serjeant*. First, one *Breen*, who says he was a Labourer's Son about the House, was mighty free in it, and used often to see my Lady have the Child in her Lap, and play with it. How likely it is that he should have this Admission and this Privilege, is a Matter which is proper to be referred to the *Jury*. There is another Person, one *Brooks* a Surgeon, and what account does he give ? Why truly, my Lady being in high Labour, he was sent for to let her Blood — I don't know whether

whether any body here knows how far bleeding is proper or usual in that Case: But see how he did let her Blood, it was in the close of the Evening, the Curtains were drawn close about her, no Candle, in a Pewter-Plate; nor did he so much as know how much he was desired, or did himself design, to take from her — After he had done his Business, he goes down Stairs. What happens then? Why he was not above an Hour below Stairs, but down comes Mrs. *Shiel* the *Midwife* smiling, and tells him that my Lady was brought to Bed of a Son; a Son who is to inherit an *Earldom* in *England*, a *Viscounty* in *Ireland*, an Estate in both Kingdoms of above 20,000 *l.* a Year, and yet none but such Witnesses as these to prove the Birth. Mr. *Brooks* was asked where he then, and now lives? His Answer was, at *Careen*, a small Village in the County of *Wexford*, within five or six Miles of *Dunmaine*. Ask all the rest of the County of *Wexford*—They know no such Village, nor ever heard of such a Surgeon. I pass by the Accounts he gave of his Age, which, put together, make him to be about six Years old when he did this notable Feat of Surgery. Was he a Surgeon to be employed in such a Conjunction? He who was never before known to or employed by my Lady, a mean obscure Person, and if a Surgeon, an unknown Surgeon of an unknown Country Village. On the other hand, you have Proof that there was one Mr. *Sutton*, a most skilful Surgeon, who always lived either in the Family of Lord *Altham*, or at *Ross* (which by the Way is much nearer *Dunmaine* than the Place where Mr. *Brooks* has placed his Residence.) I can't omit another most worthy Person, and that is one Mr. *Turner*, a *Seneschal*; and his Account is, that he came with his Wife to visit my Lord and Lady soon after *Christmas* 1714, that he lived in the House for about two Months, observed that my Lady was with Child, that he went away about *Easter* 1715, and when he returned, as he did the *August* following, he found her not with Child; but saw a Child there, and saw my Lady often play this with Child, and this he supposes to be the Child which she was big of when he was before at *Dunmaine*—Gentlemen, well consider how

how far this Man has spoke Truth; to me it seems highly probable, that so far from making such a Stay at *Dunmaine*, as he pretends, he never was within the Doors (if at any time) during Lady *Altham's* abode there; for he can't tell you the Name of a single Person that came, during those two Months, to the House, nor of a Servant that lived in it, nor even of the *Butler*, whom he was most likely to know, and indeed, at best, most fit to keep Company withal. Can it then be supposed, if he had really been at *Dunmaine*, and spent so much time there, as he would have you to believe, that he could have been so unknowing, and so much at a Loss as to these Particulars? As to his return to *Dunmaine* in *August*, it is evident that it is all a Fiction; for if Credit is to be given to the other Witnesses on both Sides, my Lord and Lady *Altham* were in *Dublin*, not only at that time, but long before and long after it.

I mention here another Name, and that is Alderman *Barnes*; his Testimony is, in Truth, so idle, that it is hardly worth observing upon; it is in effect this — The latter End of *April*, or Beginning of *May 1715*, I came to *Ross*. — Soon after my Arrival, Lord *Altham* comes into the Room where I was, and says, by *G—d* Tom I have got a Son by Moll Sheffield. — The Alderman, who knew my Lord used to have loose Women about him, imagined this *Moll Sheffield* to be one of that kind, and very gravely shook his Head in reproof of my Lord. — Upon which, says my Lord, with an Oath, Don't you know *Moll Sheffield* is my lawful Wife? — The Alderman thus set right, is invited to see this new-born Child, next Day at *Dunmaine*, and dines there — He is asked who went with him from *Ross* to *Dunmaine*; he answers, he can't tell: Who dined there? He remembers none but my Lord and Lady, and is sure they did. He is asked what Condition of Health she then appeared to be in? His Answer is, perfectly well — What her Dress? — Very fine — What the Discourse? — General and common Subjects — If any mention of the Child? — Not a Word — as he remembers — This is the whole of this Man's Testimony,

Testimony, the bare stating it can't fail to shew of what Sort it is.

The next Person it falls to my Share to mention is Major *Fitzgerald*. His Figure and Appearance might have helpt him to be an useful Witness, if he had not unluckily miss'd his Way at his first setting out, by placing this Birth in *August* or *September*, instead of *April* or *May*, the Months destined for it.—I omit to mention my Lady's Compliment to him, so soon after she was brought to Bed: A Child of a few Hours old being brought down Stairs to him, his kissing it, and giving the Nurse half a *Guinea*. These are the Deckings and Ornamental Parts of his Story — which are now become useless by his failing in Fundamentals, and deviating from the General Plan and Ground-work of the Evidence. — There is another Person brought to assist in this Affair, one *Brown*, who styled himself *Body-Servant* to Mr. *Cliff*, said to be one of the Godfathers to this Child; his Account is, that he attended his Master at the *Christening*.— Says who were the *Gossips*, and who the *Parson*, that there was a fine Entertainment and a great deal of Company at it; but take him a little out of the Way, and then he wanders, and is wholly at a Loss—As, being asked who, either Man or Woman, besides the *Gossips* and *Parson* were there, he knows not, or will not venture to name one.—But there are two Particulars in his Evidence, by which it clearly appears that the whole of it was framed for the present Purpose, and is without any the least Foundation in Truth.—The first is, He says, he was often sent to the House on Compliments from his Master to the Lord and Lady and the Child, that as often almost as he went, he used to see my Lady in her Morning-dress playing with the Child. Being then asked about the Person and Complexion of Lady *Altham*, whom he had so often seen, he gave a Description of them very different from what they really were — But your Lordship and the Jury will recollect his Behaviour, when asked concerning the Colour of her Hair,—He paused, as suspecting this Question of an ill Meaning, and after
some

some Hesitation, gave what he believed would be a saving Answer, *viz.* that she was always powdered when he saw her, and so much so, that he could not discern the Colour of her Hair; this being thought extraordinary, that a Lady undress'd and employ'd in playing with her Child, should be powdered in so high a Way; and he being farther urged and pressed by Questions on this Point, he at last fairly threw up the Game, and declared he had never seen Lady *Altham* but once in his whole Life.

The second Particular is, that he said, he and the rest of the Servants dined in the *great Hall*, which he describes to be opposite to the *Parlour* in which the *Gossips* and the rest of the Company dined—Whereas, *Scot*, one of the Witnesses examined on the Part of the *Plaintiff*, as well as all the rest of the Witnesses examined to that Point, agree there was no such Hall at *Dunmaine-House*, that the Entrance into the House (which is a small House belonging to a private Person, and hired from him by my Lord *Altham* as a Sporting-place) was through a narrow Passage of three or four Foot wide.—But it seems this Witness imagined a Lord's House could not be without a *large Hall* for Servants to dine in, and upon this Supposition, thought he might safely give a *Hall* to this House. From these two Particulars it seems reasonable to conclude this Witness never saw this Lady, nor was ever within this House; and if so, sure the nature of the Evidence brought to prove this Birth is obvious and discernable by and to every body. These are the Witnesses, and all the Witnesses to prove this great Birth, so far as I can recollect. I shall conclude therefore this Head with these Observations—*viz.* That the *Plaintiff's* Witnesses are mean Persons, who were very little likely to know what they are produced to prove; and that however they may agree in their Answers to the direct Examination, yet on the Cross-Examination (which is the usual and only Way to detect a framed settled Scheme of Evidence) they not only contradict one another in material and substantial Particulars, but are totally inconsistent with and different from themselves.

On the other hand, we for the *Defendant* have done all that the nature of the Thing would admit of; we have shewed there was no Miscarriage, nor Rumour of a Miscarriage, no Child, nor Expectation of a Child, and this by Persons of the best Fashion and Quality in the Neighbourhood, and by the principal Servants in the Family; who all concur and agree fully in this Point: Nor must it be omitted, that these Servants, upon the breaking up of the Family, all dispers'd, some settled in *England*, some in *Ireland*, nor do they appear since their Disperſion to have seen or had the least Intercourse or Communication with each other, till those of them who are alive, or could be found, were brought hither upon the present Occasion.

I now go to another piece of Evidence that has not been taken notice of; and that is the Transaction of *Wexford Assizes*; and if that piece of Evidence be true, with what was connected to it, it is utterly impossible that this Birth could have been at the Time and Place as has been sworn.

It has appeared to your Lordship and to the Jury, that upon the Sixteenth Day of *April* these *Assizes* began, and that on the *Monday* following, my Lady and Mrs. *Giffard* went in my Lord's Chariot to *Wexford*, that my Lord and the Servants went on Horseback; and this Matter is the more certain to their Memory, because it is recollected that there was then a considerable Trial there; that they stayed about a Week at *Wexford*, and then returned to *Dunmaine*. And Mrs. *Giffard* says, that she saw them frequently almost every Week two or three times, till their going to *Dublin*, which was in about a Fortnight or three Weeks after the *Assizes*, and that there was no Birth nor Appearance of a Birth at that time, nor was my Lady with Child, nor could be without her (who saw her frequently dress and undress in that time) observing and discerning it—So that if this Evidence be true, it is impossible there should have been a Child born at *Dunmaine* at this Period of Time, nor is it conceivable that a Lady of her Quality would have gone to such a Place if she were then so far advanced in her Pregnancy,

nancy, as she must have been, if the Evidence for the *Plaintiff* could be supposed true. If she had been at *Wexford* at such a time and in such Circumstances, surely there would not have been a want of Witnesses to prove her being then with Child. Every Eye must have observed it, and every body must not only have seen it; but been surprized that she should at such a time be in such a Place.

This part of the Evidence stands uncontradicted, except by Mr. *Colclough* and *Higginson*. As to the first, I don't doubt but the Account he gave was true; it was this: That he was at the *Affizes*, that Mr. *Masterfon*, a near Relation and Friend of his, was tried for enlisting Men for the *Pretender*, and that he was very solicitous to see that Justice should be done him, and saw no Ladies in the *Court-house* the Day of his Trial.—Supposing this to be true, and that his Care for Mr. *Masterfon* was so great that he did not observe those Ladies, that infers nothing but that he was otherwise or better employed; but it is plain there were Persons, and Persons of Condition, then at *Wexford*, that he might have observed, and yet did not; for he confesses he did not see my Lord *Altham* there, and yet that he was there is certain, for Mr. *Higginson*, not to mention the other Witnesses, says my Lord was there, and that he saw and paid him Money there. In reference to Mr. *Higginson*, he was brought to Town in the Course of this Trial (and his having been so, is one amongst many other ill Effects of the Adjournments in this Case) the Account he gave was, that he was collecting Rents up and down that part of the Country, on such and such Days before *Easter 1715*, as he finds by Entries in the Books of his Receipt, and therefore, says he, I do remember that on *Tuesday* in that *Easter Week* I was at *Dunmaine*.

These Entries might indeed serve him to recollect when and where he received those Rents, yet they could not satisfy him that he had been at *Dunmaine* on that *Easter Tuesday*, for he does not pretend to have paid or received Rents there, and his Entries went no farther than to the Times, Places, and Persons, when, where, and from whom,

whom, he received Rents; and therefore, as to his being at *Dunmaine* on that Day, it must depend very much, if not wholly, on his Memory.—A very slippery Dependence at such a Distance of Time; however, the rest of his Testimony seems to carry something very odd in it; when he came to *Dunmaine-House* he was told that my Lord was not at home, upon which turning about his Horse in order to go away, my Lady (whom he never had spoke to before) comes down stairs, with a Bottle of Wine and a Glass in her Hand, calls after him by his Name, and tells him he must not go till he drinks. He returns, and observing my Lady had a big Belly, drinks to her safe Delivery; my Lady thanks him, and with much Condescension stands all the while with the Bottle in her Hand, this Person (whom we have all seen, and whose Condition 'tis easy to judge of) sitting during the whole time on his Horse's Back.—There is not a single Particular in this strange Story that does not carry the greatest Improbability in it that is in the nature of Things to carry.—He can't swear where he was two Months ago, and yet swears where he was eight or nine and twenty Years ago; and that with a Positiveness, which this Trial, above all others I have ever been in, has taught me not to be astonished at. I have, with reference to Witnesses, but one Observation more; for I shall rely chiefly upon such Proofs as arise necessarily out of the Nature of Things, to shew how little of Reality there is in the Pretensions of the *Plaintiff*; this Witness, and the last I shall mention, is Mrs. *Heath*. She has appeared here, and one great Advantage of Juries for discovering Truth, is their seeing and observing the Witnesses under their Examination; and no Man that has seen her can say but that she behaved with all possible Decency, and delivered her Testimony in such a way as was most likely to gain her Credit with all who heard her. She came over with my Lady as her *Woman*, and continued with her, not only during her whole last Cohabitation with Lord *Altham*, but adhered to her in her Adversity, and served her with the utmost Fidelity to the Hour of her Death.—This Woman declared positively my Lady never had either Mis-

carriage

carriage or Child, during that Cohabitation; and that it was impossible either could have been without her knowing of it.—Therefore her Testimony was foreseen and dreaded, and therefore to be avoided by all means. What is done to effect this? These Gentlemen first file a Bill against her in the *Chancery of England*, and make an Objection founded upon this Bill, first to her Competency, then to her Credit. This was one Device for the cutting off the Testimony of Mrs. *Heath*;—but because that might fail, as it did, there is another in reserve, and to be used in case of necessity, and that was, one Mr. *Hussy* (a Person never heard of till shewed on the Table) and pray give me leave to mention what account he gives of himself; why, that he is one of this Country, but had spent most part of his Time in *England*, hardly knows any body here, but has lately got a Retirement in the County of *Kildare*: That one Night (after this Case had been several Days at Trial) after he was in bed, a Person knocked at his Gate, that he sent a Servant to enquire who it was; and after being informed it was a Gentleman from *Dublin*, he ordered one of his Servants to put up his Horse, and went himself to meet him, and received the Gentleman at the End of his *Gravel-Walk*, entertained him, and, after Supper, was to his Surprise served with a *Subpœna* by him, which he was very angry at, but however he graciously condescends to come up to Town; and when, upon the Table, he is asked, what are you? he answers, I have an Employment under the *Crown*. Of what Religion? A Papist.—Have you taken the Test? No, Sir; my Employment is under the *Green Cloth*, not under the *Crown*. Here he appears to do, what? Why, they saw that this Cause, in a great measure, depended upon the Evidence of Mrs. *Heath*, and therefore this Man is made to get acquainted with her, and to lead her into a Discourse concerning the *Plaintiff*, that he might more colourably contradict her hereafter, and by doing so, take off, at least, somewhat from the Weight and Credit of her Testimony. He comes over hither in *July* and, in a little time goes over again to have some new Discourse with her; and having, in the course of

of his Evidence, said that he found Mrs. *Heath's* Discourse on this Subject, very different from what it was in his first Conversations with her; he was asked why he did not put her in mind of the Change, (which he confess'd he did not.) His Answer was, it was, no Concern of his, he never thought to have been examined about it, and gave his Testimony now only because he could not help it. Thus a Scheme is laid with all imaginable Skill to introduce this Man, in case of need, as a Witness in this Cause, which in all probability he would not have been called to do, if the Objection made against Mrs. *Heath*, founded on the Bill filed for that purpose, had prevailed.

I shall now come to the Evidence of Things, and confine myself to two or three Particulars. In the first place the Circumstances of this great Family in the Years 1713, 1714, and 1715, were thus: My Lord *Altham* had a good Estate of his own, and the almost certain Expectation of the *Anglesey* Estate, the then Lord being far advanced in Years, very infirm in his Health, without a Child or the Hope of a Child. In view and prospect of getting an Heir to so large a Fortune, and so great Honours, both in *England* and here, the Lord and Lady *Altham* were in the Year 1713, by the Endeavours of their Friends, and, as it is thought, by the great Expence of one of her's, brought together again.—Would it not have been natural, even in third Persons, out of mere Curiosity, to observe and attend to the Event of such a Conjunction? If a Child had been born, it had not only been a Felicity, but an extraordinary one; if this then had been so, could it have been a Secret to the Duke of *Buckingham*, to the *Dutchess*, to the Lord *Anglesey*, and the rest of the Family? If born at *Dunmaine*, could it have been a Secret to the County of *Wexford*, where the Bulk of that great Estate lies?—If to the rest of the County of *Wexford*, could it have been unknown to *Ross*, a large Town within three or four Miles of *Dunmaine*?—A Town then the Estate of the Lord *Altham*, and futuramente to be the Estate of this Child.

It is therefore highly improbable such a Child should have been born, and the Persons I have mentioned not have

have known of it; 'tis almost impossible it should have been born at *Dunmaine*, and the Gentlemen of the County, the Neighbours and the Tenants, should not have heard of it; yet no body of any Fortune or Figure in that County ever heard of it; Colonel *Loftus*, Colonel *Palliser*, Mrs. *Giffard*, and Mrs. *Lambert*, know not a word of the matter. The Tenants of the *Anglesey* Estate, of the *Altham* Estate, even those of *Ross* are utter Strangers to it.—In the next place, let it be consider'd whether there was any thing at all suitable to this Child in any other Part of this Transaction. The Child's Nurse was *Joan Landy*, she was not only called a *Whore*, but the *Whore* of my Lord *Altham*; and I believe a Mother never sent a Child to be nursed to a known *Whore*, much less to the known *Whore* of her *Husband*.—Not to mention another Circumstance of Disadvantage, viz. the Staleness of her Milk, concerning which it appears, by their own Evidence, both Lord and Lady *Altham* were curious and delicate, and employed a Physician, one Doctor *Brown*, to inspect the Milk of those who offer'd themselves to be Nurses to this Child.

In the next place, Gentlemen have heard what sort of a Place it was the Child was sent to.—Indeed *Joan Laffan* had Judgment enough to add a new Room to this House, made up, as she said, for the Reception of this Child; but all the other Witnesses examin'd, as well those for the *Plaintiff* as the *Defendant*, did declare there was no new Room, and most of them not the least Alteration in that House from the Day it was built to the Day it was pulled down. I would mention another Particular: Has it been proved, *Gentlemen of the Jury*, that *Dunmaine* House had no Room in it, but what was filled by Lord and Lady *Altham*? Can any body imagine, if there was a spare Room, a Place that would hold a Nurse and Child in the House of *Dunmaine*, they would have turned the only Child they had, the only Child they were, at that time of their Lives, like to have, out of their own House, into such a *Cabbin*?—But there is another Particular that has not been mentioned, and, and that is, who were Gossips? Why, truly, the Godfathers were one

Mr.

Mr. Cliff, and one *Anthony Colclough*, and the Godmother was Mrs. *Pigot*. Now, not to detract from their Birth or Condition, but allowing them to be Gentry of middling Fortunes and Families, were these *Godfathers* and that *Godmother* fit and equal to the Birth of this Child? Surely not, and the less so, because *Anthony Colclough* it is in proof was a Papist. Indeed we stand for *Papists* Children, yet no *Papist* stands to a *Protestant's* Child, because it is supposed it engages him to bring up the Child in a Faith contrary to his own; but independent of what regards this Mr. *Colclough*, were he, and Mr. *Cliff*, and Mrs. *Pigot*, equal or proper *Sponsors* for such a Child? The Duke and Duchess of *Buckingham*, my Lord *Haversham*, and my Lord *Anglesey* were alive at that time. Can any one doubt but that the Duke of *Buckingham* would have been pleased his Daughter had got an Heir to the *Anglesey* Estate? Would not the Dutchess have been glad of it? And would either of them have refused to grace and do honour to such a Baptism?

Mr. *Prime Serjeant* has taken Notice of what great Service a Child would have been to my Lord *Altham* in the Circumstances he was in, and the Practices in which he was engaged. What was he forced to do? He was forced to get his Brother to join with him in selling Titles, who never would join with him without having a large Share of the Purchase-Money, which was the Cause of many Quarrels between them. If my Lord had had a Child, or Children, he could have made a much better Title to Purchasers; and therefore the taking in of his Brother must have been a Thing of Necessity. Had there been a Child, no Purchasers would have bought, because the joining of the two Brothers could not have made a Title against Lord *Altham's* Children; and therefore this shews that Lord *Altham* knew he had no Child, and the several Persons that purchased must have known it likewise, or without doubt, they neither would, nor could, have been advised to pay their Money for such Titles as my Lord *Altham* and his Brother could have made them. Add to this, that if there had been a Child, my Lord would not need the Help or Joining of his Brother, and consequently

quently might have had all the Purchase-Money to himself; and this he enough both desired and wanted. There is another Circumstance, and that is, what became of the *Altham* Estate upon the Death of Lord *Altham*? And it does appear clearly, that immediately upon his Death, *Arthur* Earl of *Anglesey* entered into the Estate and enjoy'd it without the least Disturbance to the Day of his Death. And I must here observe, that how obnoxious soever he might have been in his publick Character, in his private Dealings and Principles he was ever reckoned a perfectly honest Man. As to the present Lord *Anglesey*, though he is charged with conveying away, or what is called *Kidnapping*, this Boy, yet the last Lord is not so much as suspected of having been capable of any Share in any such Action; and sure this Lord, if he was in any Degree accessary to it, had very little Temptation to do so: He got nothing by the Death of his Brother but a bare Title of honour, a Burthen, rather than any thing else, to a Person of his then Circumstances. I must not here omit to observe, that the Tenants of the whole *Altham* Estate, and amongst them, the People of *Ross* paid their Rent, and took Leases and Renewals of Leases from *Arthur* Lord *Anglesey*, without Scruple or Difficulty. And this is to be observed farther, that at the Time of Lord *Altham's* Death, and for six Months after, this Boy was in this Town, in the Streets of it; my Lady *Altham* was alive in *England*, she knew my Lord was dead, and had she known she had a Child, sure she would not have been passive, and suffered such an Injury to be done him; nor would the Dutcheffs of *Buckingham* have stood by, and seen *Arthur* Lord *Anglesey* take Possession of that Estate. The same Observation may be made with respect to this Kingdom; should we have nobody to turn Patron to this Child? Would nobody have been charitable enough to have espoused his Cause? Are People of that Character a new Growth, and peculiar to the present Time? I can't help, upon this Occasion, reminding Gentlemen of the Foot *Arthur* Lord *Anglesey* was on in this Kingdom in the Year 1727: No Man sure more odious to the People generally, the Peo-
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ple of Power universally. — Could a Title and a Claim against him, if in any Degree supportable, have wanted Advocates? been without Patrons? I can never persuade myself it could. I must here observe, that Counsellor Tighe was as passive in this Particular as the Rest of the World: He indeed took the Plaintiff into his House, imploy'd him in the lowest Offices in his Kitchen, put him on a Habit suitable to the Occupations he used him in, and this at a Time, when, as he says, he believed him to be a Peer of the Realm. There are two popular Articles,—The *Transportation*, and the *Prosecution at London*, that give some Countenance to this Proceeding; there are Persons too against whom 'tis thought any thing will prevail, or sure this *Romantic Cobweb-Title* would never have been brought upon the Stage, I mean, upon the Stage of a *Court of Justice*.

Upon the Whole, *Gentlemen of the Jury*, if ever Case deserved great Consideration, this does; your Verdict, indeed, which Way soever it shall be, will comprehend but a small Part of what is in Dispute between these Parties; but, with your Characters, who are to give it, it will be of mighty Weight and Influence in all future Controversies arising upon the same Question. I have only therefore to wish you may, and I doubt not you will, give such a *Verdict* as the discountenancing chimerical Claims, the Stability of Property, and the Peace of Families seems to me to require.

The RECORDER, EATON STANDARD, Esq;
for the Defendant.

May it please your Lordship, and you Gentlemen of the Jury,

I Fear I shall speak both unprofitably for my *Client* and myself, since the Gentlemen that have spoken before have so fully observed on the Evidence. My Duty forbids my Silence, but I shall endeavour to avoid any thing that was spoken before, and only make some Observations
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upon such Things as might escape any Man's Memory, in so long a Time as this Trial hath taken up. My Lord, the only Point to be considered by the *Jury* is, whether my Lady *Altham* had a Son; if that cannot be proved, nothing else is to be relied upon.

To introduce this *Birth*, there are two *Miscarriages* attempted to be proved; one sworn by Mrs. *Cole*; and I think what she has given in Evidence, will plainly shew that this could not be a *Miscarriage*. The Cause of it is my Lord's breaking some *China Cups* that had odd Figures on them, which were disagreeable to my Lady. Can any Man say, that this was an Act of Unkindness to my Lady, or that it could give her Offence? In this Cause, though there has been Proof of his Behaviour to her from the Year 1713, to the Year 16, I can't call to mind that any one Act of Kindness has been proved to be shewn to my Lady by my Lord, except this one: It is the single Act of Kindness, in regard to her, and how this should be construed by her, so as to frighten her, is astonishing to me. But the Answer my Lord made, and which Mrs. *Cole* has sworn to, takes away all Probability from the Fact. When he heard my Lady had miscarried, I think it must have struck him with Concern, when the only Hopes they had of a Son was defeated. Can any Man suppose that my Lord would not have been in the greatest Concern that an Accident, which he meant in Favour of his Lady, should have that Event? Can my Lord's Saying, *It is her own Fault*, be supposed to be his Reply? Would not he have said, *My Lady can't imagine I would have offended her? I did it to oblige her*. Therefore, I say, that in my Apprehension, this takes away all Probability from this *Miscarriage*. But, besides this, Mrs. *Cole* appears to have been but a Girl, and Things of that Nature are not communicated to such young Creatures.

The next Thing I shall observe, is the *Miscarriage* in Town. Not a Mortal to prove *that*, but *Catharine McCormack*. Mrs. *Blake* that visited my Lady, was a Relation, she and her two Sisters visited my Lady, and they knew nothing of it: Can it be presumed that she
should

should have miscarried, and it be only known to this *Catharine McCormack*. Mrs. *Annesley*, who was produced by the *Plaintiff*, proved no more than that her Brother Mr. Paul drank my Lord's Son's Health; and what she swore as to her Brother's Apprehension could be no Evidence: But she swears she never heard my Lady had a Child till my Lord and the Child were at *Kenna*. But this *Catharine McCormack* tells your Lordship, that my Lady, upon Account of a Quarrel between my Lord and Mrs. *Heath*, screamed out, and my Lord called for Mrs. *Lucas* the Midwife out of the Window. Compare the Testimony of Mrs. *Heath* with this, and then you'll see with what Art this is cook'd up on the Side of the *Plaintiff*. Mrs. *Heath* swears, that my Lord said he would turn my Lady out of the House, and send for Mrs. *Lucas* to be satisfied whether she was with Child or not before he did so; and my Lord, this is turn'd into a *Miscarriage*, because Mrs. *Lucas* is called for. Now, let us consider the Testimony of Mrs. *Shaw*; she swears, that this *Catharine McCormack* declared to her, that she never heard, or knew that my Lady was with Child, or miscarried. Now, considering this Evidence, along with the Account that is given by Mrs. *Heath*, what Credit can be given to the Testimony of *Catharine McCormack*? But these Gentlemen were resolved to lay something preparatory to the *Birth*, and therefore would have Witnesses to prove *Miscarriages*; and if these be discredited, it will bring Discredit on all other Witnesses, and shew with what Art they had contrived to give Colour to this *Birth*.

In order to prove this *Birth*, one *Redmonds*, an Under-servant, is sent for the *Midwife* to *Ross*, she's brought just as my Lady wants her, brought in the Evening: Can it be presumed, that a Woman of my Lady *Altham's* Distinction, living in the Country, being so near her Time of Travail, and where the Birth was of such Importance, should be under the Necessity of sending for a *Midwife* at that Point of Time? If this had been in a Town where *Midwives* could be call'd in an Instant, there might be some Colour for this; but even in that Case,

there is no Man who has a Regard for his Wife, but has the *Midwife* and *Nurse-keeper* ready before-hand. Therefore, this shews such an Improbability, that this single Consideration is sufficient to overturn that Part of the Evidence. Then let us see who were there, who were present at this Birth, my Lady's Woman, *Nelly Murphy*, and *Mary Doyle* an *Under Laundry-maid*, and the *House-maid*: These are improper Persons to attend a *Lying-in Woman*. Could it be expected, that, in this Case, they would not have a careful *Nurse-tender*? These Circumstances speak strongly that this is all a made, a contrived Evidence. There is this Circumstance further, that this *Redmonds* varies in his Testimony about his bringing this *Midwife*; he first swears that he brought her into the *Hall*, and after that he dropt her in the *Yard*. Is it not surprising that he should not bring her into the House, and that he should have more regard for his *Hackney Horse* than for the Family? This I say is highly improbable; but there is one Thing more astonishing in this Case; and that is, that *Brooks* the Surgeon should be sent for; and I shall shew your Lordship, to a Demonstration, that from his own Evidence he swore falsely. He swore that he had been 27 Years a practising Surgeon, and that he had been 10 Years before that a practising Surgeon in the Country. He was asked what Quantity of Blood he took from my Lady; he can't tell, he bled her without any Guide, into a *Pewter Plate*; and when he had done, went down Stairs, and sat there alone. Can it be imagined, if he had done this Service, that no one in the Family would have taken Care of him, and that my Lord would not have paid him? And therefore it shews that this is a Piece of Cookery. He says, he was so many Years a practising Surgeon, and when he was examin'd as to his Age, he was but forty-nine Years old. Who could be a Surgeon at 12 Years old? It appears too from what he says, that the Place at which he lived was as far distant from *Dunmaine* as *Ross*; Mr. *Sutton* an eminent Surgeon, who had lived in the Family, lived then in *Ross*. Is there a Probability that they would not have
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sent to a Town where they might be sure of a Surgeon, and not have sent for this *Vagrant Man*? Therefore, I say, it carries Improbability in the Face of it. My Lord, there was one *Turner* examined to Facts previous to the Birth, and it appears that he swore he was married, and kept his *Lent* there, and stay'd all the *Easter-Week*; that was to tally with the Time of the *Affizes* of *Wexford*; but when he is ask'd when was the great *Eclipse*, he swears he believes it was a Year after, or ten Months. Could any Man mistake that? or forget himself so far, as to say he could not tell when the great *Eclipse* was? This is impossible, and that shews that Persons who come not with an Intention to speak Truth, when they are taken out of the Course presented to them, are not prepared to answer particular Facts, and they overturn themselves.

The next Thing I shall take Notice of, is the *Affizes* at *Wexford*; but before I go to that, I must mention one Circumstance which overturns the Evidence of *Joan Laffan*, and all the Tribe of their Witnesses; and that is the Testimony of *John Scot*. He swears that he came, after the Birth of the Child, to inquire how the Child did, twelve Times at least, with *how do you's*. He swears *Rolph the Butler* was then there. He swears he deliver'd some Messages to him; but what quite destroys his Evidence is, that he swears he delivered some Messages to *Joan Laffan* there. Now, *Joan Laffan* swears she never saw *Rolph*, and *Rolph* swears he never saw her; it is impossible therefore they should be there at the same Time; so that this *Scot* appears to be contradicted by their own Witnesses.

As to my Lord and Lady *Altham's* going to *Wexford*, in my Apprehension there is the utmost Probability of Truth in it; every Thing tallies, and I shall shew your Lordship, that Mr. *Colclough's* Testimony does not destroy one Tittle of it. Mrs. *Giffard* went in the Chariot with my Lady, my Lord rode, *Dyer*, my Lord's Gentleman was sick, *Rolph* rode, and Mrs. *Heath* rode; they were examined to all these Facts, and were consistent. Mrs. *Giffard* swore they lodged at one *Sweeny's*, that they

were at the *Affizes*, and that there were several of the *Pretender's* Men tried; and my Lady not having been among the Gentlewomen of the Country, she had a Mind to go see those Trials. She was cross examined, and they ask'd her if several *Judges*, whom they named, were there, these were the *Judges* that were all displaced before that *Affizes*; she swore she could not tell the *Judges* Names. We brought a Witness to prove who the *Judges* were that went that *Circuit*, that was Mr. Kerr, who was Clerk to my Lord Chief Justice Forster. To controvert Mrs. Giffard's Evidence, requires the fullest Proof that can be. Mr. Colclough was brought, and he said he did not remember that he saw my Lady *Altham* there; he was busied about the Trial, and he did not remember even to have seen my Lord there, who was proved to be there by the Plaintiff's Witnesses. Is that Evidence? What Stress can be laid upon his Evidence, that he did not see them there, when he did not see my Lord there? Therefore what Stress can be laid upon his Testimony, when it appears demonstrably that a Person was there, that he did not see. Mr. Colclough was a Man acquainted with all these Families. Mrs. Pigot was his Aunt, she lived in the Neighbourhood of *Dunmaine*, and yet they did not think fit to ask Mr. Colclough one Word, what the Reputation of the Country was concerning my Lady *Altham's* having a Child; they omitted to examine him to it. I think that Circumstance alone has great Weight in the Case.

As to *Turner*, if what he says be true, he could not be at the *Affizes*; for he was the whole Week at *Dunmaine*; he does not speak a Word of my Lord, nor of my Lady, but speaks of his residing there with the Family; and yet my Lord was at the *Affizes*, and therefore equally as strong that my Lady was there too. This was the latter End of *April*. Can any one imagine that this Lady, big with Child, would be so indiscreet as to go to an *Affizes*, when she was so near the Time of her Delivery. It appears by uncontested Proof, that my Lady was here in this Town the 28th of *May*, the first Birth-day of King *George the First*; that's contrary to what all their Witnesses swear, viz. that she kept her Chamber for a Month

Month or five Weeks about that Time; and there is another, though it be but a trivial Circumstance, yet it has Weight in it, which is, that *Elenor Murphy* swears that the *Christning* was in the yellow Room in the *Bed-chamber*, and *Mary Doyle* that it was in the *Parlour*, and that my Lady was not at it. Now, putting all these Things together, how is it possible to imagine that this Child, Heir to such a Fortune, could be born, and its Birth not be publickly known and fully attested? Won't Gentlemen expect to have positive Proof of the Birth? And if Witnesses that come to prove it fail, will the Suggestions of my Lord's transporting or prosecuting him avail one Farthing? *Higginson* swears that he was *Receiver* to my Lord *Altham*, but only of the *Nanny-Water* Estate, and that *privately*, because he was *Receiver* to *Arthur* Earl of *Anglesey*. Now consider the Improbability of his Testimony: He might have been receiving the several Sums of Money he says he was, and his *Entries* be true; but might not he tack a Falshood to this? I went to *Dunmaine*, says he, and enquired if my Lord was at Home; I was told he was not, but my Lady came down to the *Back-door* to me, which appears to be two Pair of Stairs from her own Chamber, and yet she comes down, though big-bellied. But is there a Probability, that this Lady, who appears to be so high a spirited Woman, would come down two Pair of Stairs to this *Receiver*, and give a Glas of Wine to him? Is it not more probable that some of the Servants might have done it? I say these Things are instead of 10,000 Demonstrations, that this is a *false* Fact tack'd to others that are *real* ones. And we know this is the usual Method of People who undertake to prove a Falshood, and therefore no Weight is to be laid upon his Testimony.

I won't trouble your Lordship with Observations concerning the Reputation and the Places this Boy has been in; but there is one material thing omitted; and that is, the Testimony of *Catharine O Neile*. Consider it, and you'll see that this is a Scene of Iniquity through the whole. She tells your Lordship, that she took care of

the Child at *Carrickduffe*, and she brought him up to Town to *Cross Lane*. My Lady was then in *Stable-Lane*; she swears that she went to the Country, and stayed there about five or six Months, and then returned, and then she married and lived in *James's-street*, and says, this Boy came to her House, and told her how he was deserted, and then swore she went to my Lady, and told her of it. Can any body imagine that my Lady, who had lost her Husband, should never send for her Son in this Distress? Could she be afraid of my Lord? Had not she suffered the utmost? He had turn'd her off, and not given her a Farthing. What worse Usage could she expect? Can you suppose that my Lady would not have been glad to have had her Son, and taken that Opportunity of bringing him home? My Lord had given Directions before, that my Lady should not see him; and when I consider the Testimony of *Laffan*, there appears the greatest Improbability in it; she had positive Directions that my Lady should never see the Child; but to make way for the Testimony of *Lutwyche*, she is to be absent a Week, and *Lutwyche* is to have him brought to my Lady by stealth. I would only observe one thing more here, and that is, that this *O Neile* has given you this Account; and it appears that my Lady removed from this Place to Alderman *King's*, lived there 14 Months, and talked of her Distress. Can it be imagined that this Woman would not have mentioned the Distress of her Child to him and other People? She was the natural Daughter of the Duke of *Buckingham*, and by his means brought to her Husband. Can it be presumed that this Woman could be so inhuman, so negligent of her own Welfare, as to abandon her own Child, when his Father had even turn'd him off? I shall only add one Observation to what the *Prime Serjeant* made upon the Advantages the Family would have had, if this was a *real* Son. Can it be presumed, when my Lady had the Account of her Husband's Death, that she would not have taken care of her Son, and have asserted his Right? She would have had the Guardianship of this Son; can it be presumed that this Opportunity would have

have been omitted of getting a suitable Allowance made to her by a *Court of Equity* out of the Estate of this Child? Therefore, I say, it is contrary to *Nature*, to her own *Interest*, and to *Reason*, that she should neglect him. The Duchess of *Buckingham* was the Widow of Earl *James*, she had a Demand upon this Estate; if the Family had the care of this Son, Things would have been put into an easier Method. Is it probable that she would not have taken care of him, when her Interest was coupled with it, or that the *Duke* should not take care of his *Grandson*? I say these things are contrary to the *Nature* and *Interest* of the Woman, and how can mortal Man believe it?

I shan't trouble your Lordship with many more Circumstances; I shall only endeavour to glean up those that have been omitted. There is one Observation that I shall beg leave to make upon the transporting of this Boy. *Crommie*, who produced Mr. *Stevenson's* Book, swore that *Skellern* made the *Entries*, went down to the Ship to take the *Entries*; he swore *Skellern* was an honest Man. Can it be presumed, as he called every Man, and took the Names from the Persons themselves, that he could possibly mistake? and therefore he took *James Ansley* right: Whereas Mr. *Gonne*, who swore that it is the Master of the Ship that brings the Names to the *Tholsel*, and that they took the Names from him, might easily mistake, and enter *Hensley* instead of *Ansley*. But is it not surprising that this Boy, when a Man, came on board the Ship to enter the Names of the Persons to be transported, should not mention his distressed Condition? The Boy did not want Sense. Can it be presumed that he would not at that Time have taken notice of this *Skellern*, and said, Sir, *I am sent away against my Will, pray give me Relief*? Can any Man living think that this Boy, in all this Distress, should not have this Thought, and that he should have forgot his Distress in two Days? Therefore, in my Apprehension, this is a framed Story to throw Dirt upon the Defendant.

I beg leave to consider how *Rolph* was applied to by Mr. *M^cKercher*. If *Rolph* was not at *Dunmaine* during that time, would any Application have been made to him? How came Mr. *M^cKercher* to know there was such a Man as *Rolph* in the World? He liv'd in *Marrow-bone-lane* in *London*. How came Mr. *M^cKercher* to send *Fowl*, *Bacon*, *Sprouts* and *Lamb* to a Man he had never spoken to? Does not this shew that he thought *Rolph* was a material Man? I mention this to shew that *Rolph* must have been known to be at *Dunmaine* at that time; and therefore, I say, that *Rolph* was in the Service, and that Mr. *M^cKercher* knew it.

I shall now make but one or two Observations upon the whole. My Lord, I humbly submit it to your Lordship and to the Consideration of the *Jury*, whether there ought not to be the most full, pregnant, uncontroverted Evidence of the Birth of this Child, in order to found a belief of his being the Son of Lord *Altham*. The Birth of the *Defendant* is not controverted, the Births of the *Remainder-Men* are not controverted, many of them are interested in this Question, and that ought to be considered, because putting in a *Supposititious* Son is not only an Injury to the present Man, but to all in Remainder under him. Here is a Man that has no Son; is not the putting a *supposititious* Man into a Family, not only an Injustice to Posterity, but to the first Founder of the Family? And he, I think, is to be considered in this; his Fortune was made for his lawful Posterity, his Labour and Time spent in acquiring Fortunes and Titles, which are to descend to his *Legitimate* Issue; and therefore, if this strange and slight Proof, a Proof not to be credited in the Material Point, if that is to be *bolstered up*, what Injustice may be done to the *Remainder-Men*, to the *Publick*, and to *Lessees* and *Purchasers*? And therefore I say, when this comes to be the Case, there ought to be such Testimony as is free from Objection, such Witnesses as can't be impeach'd; and when I have said this, can any Man living think that *Elenor Murphy*, *Mary Doyle*, *Joan Laffan*, *Dennis Redmonds*, *John Turner*, and *Brooks the Surgeon*, who have contradicted themselves as well

as others, are such Witnesses? Can that be looked upon to be Testimony adequate to the Case? who are the Persons, in such a Case as this, that are proper to appeal to, are not the Servants of the Family, and the People of the Neighbourhood? They have not produced one of the Neighbourhood, nor any Persons of the Family of any Credit. There's Mrs. *Heath*, and there is no Imputation as to her Character, except by *Hussey*, who contradicted himself. He says indeed, she differed from herself. But what Foundation had he for his saying that she differed from herself? When he comes to be asked how she did differ, why he does not pretend she had ever said a Word from which he could collect this. He never asked her what Testimony she was to give, and that's a Circumstance that gives great Weight to her Evidence. If she differed from herself, he must have collected this from something that fell from her, in relation to what she was to be examined about, and if he imagined she differed from herself, why did he not expostulate with her. The manner in which this Witness introduces his Testimony, shews him to be a *peremptory positive* Witness, he takes care to shew that he was a Residenter in this Country, and came here unwillingly to give his Testimony: But no body asked him how he came here, nor was there any Occasion for his making an Apology for his coming, if he had no other Intention than to declare the Truth. On the other hand, *Rolph* appears to be a consistent Witness; and *Cavenagh*, who was Groom to Lord *Altham*, and swears that he never heard that Lady *Altham* had a Child or miscarried, when he comes to be examined, recollects, and won't swear to any Fact he is not sure of. Considering all these Circumstances, I say, and the vast Consequence of the Affair, I apprehend the Plaintiff ought to prove the *Birth* incontestably; but I beg Leave to say, that he has failed in it; that all his Witnesses have been impeached, and I hope the Gentlemen of the *Jury* will think that no Man ought to recover the Defendant's Estate, but one that has an undoubted Title; and if there be a Doubt about it, the Doubt ought to be in Favour of the Possessor: And

therefore I hope, when this comes to be considered by the *Jury*, they will strip it of all Prepossessions, and not think of Suggestions. The only Substantial and Material Point, is the *Birth* of this Child, and I shall submit it to your Lordship, and the *Jury*, whether there has been any Evidence given of it that can be credited.

For the PLAINTIFF.

SERJEANT MARSHALL's *Speech*.

My Lord,

THE Case for the *Defendant* has been laid before your Lordship and the *Jury* with great Art, and many ingenious Observations made on the Witnesses produced by the *Lessor* of the *Plaintiff*, and on the Testimony deliver'd by them; to which I shall endeavour to give Answers, lest they should make an Impression on the Minds of the *Jury*; and then I shall consider the Evidence given on the Part of the *Defendant*.

But before I proceed, it will be necessary to make one Remark, that the Fact of *spiriting* away the *Lessor* of the *Plaintiff* by the *Defendant*, and of sending him into *Slavery* (of which we gave full and clear Evidence) is not controverted by any Testimony whatsoever. For though in stating the Case for the *Defendant*, it was alleged that the *Transportation* of the *Lessor* of the *Plaintiff* was voluntary, and that he did apply and desire to be sent abroad, and advised with some Persons about the Manner, that he was seen and talk'd to on Ship-board, and declared his Inclination of going to the *West-Indies*; yet the *Defendant* has declined to offer any Proof in support of these Allegations; from whence I may reasonably conclude that no such Proof could be made, and therefore I take that as a Fact admitted, at least not denied.

The Birth of the *Lessor* of the *Plaintiff*, which happen'd above twenty-eight Years since, is the great Question

tion now to be determined; and after such a Length of Time many of the Witnesses to that Birth are dead, the Midwife who delivered Lady *Altham*, Mrs. *Butler* of *Ross* who assisted at the Delivery, the *Clergyman* who christened the Child, and the *Sponsors* on that Occasion, are all proved to be dead; so that this Fact can't now appear with the same Certainty as if the Enquiry had been Recent; and by the *Defendant's* own *Act* this Case is involved in all the Difficulty which attends it, for I am warranted by Proof to say, that the *Lessor* of the *Plaintiff* about twelve Years of Age was, by the *Defendant's* Means and Procurement, *Kidnapp'd*, and sent into *America*, there sold as a *Slave*, and continued in that miserable Condition, 'till his Return 1741, fourteen Years after the Transportation.

It has been urged for the *Defendant*, that if there be a Doubt in this Case, the Jury should incline in favour of him, in regard to his long Enjoyment of the Honour and Estate; but if the Gentlemen of the Jury are of Opinion that the *Lessor* of the *Plaintiff* was spirited away in the Manner we have proved, and thereby deprived of an Opportunity of knowing where the Witnesses might be found who could prove his Birth, and of asserting his Birth-right; then I apprehend that the *Defendant* (instead of reaping any Benefit by Possession of the Honour and Estate) shall be considered as a *Spoiler* in Law, and that every Part of our Proof ought to be taken most strongly against him.

It may not be improper to observe, that the *Lessor* of the *Plaintiff's* being in *Jamaica* was publicly known, long before his Arrival in *England*; that he was expected over and intended to claim the Earldom of *Anglesey*, with which the *Defendant* was as well acquainted as the rest of the World, and without doubt, prepared for his Defence. I mention this Circumstance only, that the Gentlemen of the Jury may have it under their Consideration, when they compare the Evidence on both Sides; the Advantages which the *Defendant* unjustly gained, with the Disadvantages under which the *Lessor* of the *Plaintiff* laboured. And though there is much

Perjury in the Case, yet they will be able to discover by Comparison, which is a framed Evidence, and which is natural and true, and to the Jury it must be submitted.

The first Observation made by the Defendant's Counsel is, that the Birth of a Son in this Noble Family, was an Event of such Consequence, that it could not have remained a Secret, or Matter of Doubt. But surely Gentlemen have not attended to the Evidence, or this Observation had never been made, for they should remember this was an Event, publick, and well-known in the Family. Mrs. *Annesley*, a near Relation, a Lady of Figure and Character, says it was known by all the Family, that Lady *Altham* had a Son: Mr. *Higginson*, a Witness above all Exception, and Receiver of *Arthur* Earl of *Anglesey's* Rents, tells you that Earl *Arthur*, in Presence of many People from *Ross*, was informed of Lady *Altham's* being delivered of a Son: Alderman *Barnes* tells you, that all the Town of *Ross* knew it; so that this is not an Event so secret as the Gentlemen for the Defendant would insinuate; but it is remarkable that the Defendant, who has been for some Years past consider'd as the Head of this Family, and must be better acquainted with the Family than the Lessor of the Plaintiff, has not produced one of this Family to shew, that this Event was not well known in the Family.

Another Observation is, that the Birth of this Son is proved by Persons of mean Birth and Condition. I do admit the present living Witnesses to the Birth of the Lessor of the Plaintiff are so; but it is impossible for any Man to keep his Witnesses alive; yet I think it clear, from the Evidence of Mrs. *Heath*, that it was not in the Power of Lady *Altham*, from her Situation at *Dunmaine*, to have had many Persons of high Reputation present at this Birth. Mrs. *Heath* tells your Lordship, that there were very few Neighbours in the Country, and the Persons that appeared upon the Table, and professed their Acquaintance with the late Lord *Altham*, were Persons that very few Gentlemen would have kept Company with. There are but two Women produced for the Defendant from that Country, Mrs. *Giffard* and Mrs.

Mrs. *Lambert*; they say they were frequent in their Visits, and well acquainted with Lady *Altham*, in order to concur with the other Witnesses for the *Defendant*, and to shew the Improbability of Lady *Altham*'s being with Child without their Knowledge; but their Intimacy is denied by the Witnesses produced by the *Lessor* of the *Plaintiff*, and I shall submit it to your Lordship, and to the *Jury*, whether the Story of the frequent Visits is probable. For Mrs. *Heath* tells you, that neither Mrs. *Lambert* nor Mrs. *Giffard*, ever visited Lady *Altham* in *Ross*: But she tells you that Mrs. *Pigot*, the *Godmother* of the Child, frequently did; and no doubt there was an Intimacy between Lady *Altham* and Mrs. *Pigot*. Would Mrs. *Giffard* and Mrs. *Lambert* have it understood, that Lady *Altham*'s Separation from her Lord was so offensive to them, and their Virtue so outrageous as not to permit them to visit her Ladyship after? No; it could not be; but the true Reason was, because they had not that Intimacy with Lady *Altham*, which they now pretend, and which appears to me meerly calculated by them for the Purpose of corresponding with the other Witnesses only.

Several Observations have been made on the Testimony of Mrs. *Cole*, notwithstanding which, I hope your Lordship and the *Jury* will be of Opinion, that Mrs. *Cole* is a Person of unquestionable Credit; that the Evidence she has given, is extremely probable and natural, and strongly supported. You will please to observe, that Lady *Altham* came to this Kingdom in the Year 1713, and it is in Evidence by Mrs. *Annesley*, that it was whispered her Ladyship came over young with Child; Mrs. *Annesley*, examined here, did say it. Mrs. *Cole* tells the *Jury*, that Lord and Lady *Altham* were reconciled at her Father's Captain *Briscoe*'s, stay'd there a few Days, and from thence went to Mrs. *Vice*'s in *Essex-Street*, where they remained about 5 Weeks before they went to *Dunmaine*; to which Place the Witness with her Mother went soon after. At *Dunmaine* there happens an Accident, which Mr. *Recorder* was pleased to say was a Compliment to Lady *Altham*, and an Act of Kindness; but I believe very few Ladies would esteem it to be such,

if you will take it as delivered by the Witness, which was, that Lord *Altham* took up a *Sawcer* having indecent Figures upon it, which was brought to Table with Pickles, and flung it just by my Ladies Forehead; upon which Lady *Altham* was frightened, swooned, and at Night could not come down Stairs. Mrs. *Heath* says, that Lady *Altham*, who is represented to be a very proud haughty Lady, was all Meekness and Quietness, and not alarmed at this Rudeness; but can that be supposed? Or can any body believe that a Lady, as proud as any Woman in *Europe*, would not resent the throwing of a *Sawcer* in that manner? Is not the Consequence very natural, that Lady *Altham* must be frightened at it, as the Witness swears? And are not all the other Consequences, and every part of this Testimony, connected with the Circumstance of Lady *Altham's* Confinement to her Room, extremely strong? Yet because Mrs. *Cole* remembered that her Mother was called out of Bed, it has been mentioned as a *Dream*. Notice has been also taken of the Word *Abortion* used by the Witness, as very extraordinary to come out of the Mouth of a *Girl of Thirteen*, but the Gentlemen forget that the Witness is now forty-three Years old. It has been also urged, that Ladies of Thirteen are not so very Curious, and that an *Abortion* is not a proper Subject for their Consideration; yet I will submit it to the Gentlemen of the Jury, whether young Ladies of Thirteen have not Curiosity enough to make every Remark which this Witness has done.

My Lord, Mr. *Prime Serjeant* has mentioned to your Lordship and the Jury a second Miscarriage, and he has to be sure mentioned that, in order, if possible, to induce a Suspicion on Mrs. *Cole's* Testimony; but I refer to your Lordship's Notes, and insist that *Catharine McCormack* did not say that Lady *Altham* miscarried; the Words were, that there was a Talk of a Miscarriage, when she was at *Vice's* House, and see if that Talk was not well supported by what Mrs. *Heath* says; she tells your Lordship that there was a Quarrel between my Lord and her, that there was a Cap pulled, and high Words between

tween Lord and Lady *Altham*, upon which, that my Lord did send for Mrs. *Lucas*, a most remarkable *Midwife* in this City.

Was not that a reasonable Foundation for a Person of Mrs. *McCormack's* Figure to imagine there was a *Miscarriage*; and though it was insinuated to the Jury, that she had proved a second *Miscarriage*, yet the Witness went no further than I have mentioned, which was very likely to be believed, when my Lord said he would send for a *Midwife*; and the Reason assigned by Mrs. *Heath* for Lord *Altham's* sending for a *Midwife*, can't be true. Your Lordship sees that she would have it understood, that Lady *Altham* never had any signs of *Pregnancy*, yet Lord *Altham* resolving on this Quarrel to part with his Lady, wanted to be satisfied, whether her Ladyship was with Child before he turned her off, I will admit that Lady *Altham* did not then appear to be *Pregnant*, and though this happens in *August* 1714, yet Lady *Altham* continues with her Lord till *February* 1716, above two Years after.

My Lord, it has been mentioned also, that it is a very strange and a wonderful Thing, that if Lady *Altham* was with Child in this Town in *December* 1714, that these young Ladies Mrs. *Cole* and Mrs. *Briscoe*, should not have known it. I appeal to your Lordship, if we did not ask the Question of them, what their Mother told them concerning Lady *Altham's* *Pregnancy*. My Lord, they were stopp'd, and directed by the Court, that *Hearsay* was no Evidence, and they were not suffered to declare what their Mother told them on that Occasion. So that, my Lord, if these young Ladies were so young, it is very possible, though Mrs. *Cole* might be acquainted with the Circumstances of the *Miscarriage* at *Dunmaine*, being awakend out of her Sleep, and seeing Lady *Altham* confined, and having Curiosity to know the Cause of that Confinement; yet it would be very improbable, that she and her Sister should have known that Lady *Altham* had been with Child in *Dublin*, except from their Mother. But from the Objection made to their declaring what their

their Mother said concerning Lady *Altham's* Pregnancy, the Gentlemen of the Jury may presume that their Mother told them that Lady *Altham* was then with Child.

The next Witness that has been attacked is one *Alice Bates*, and of her it is said, that the Freedom used by Lord *Altham* to her was highly improper. I beg your Lordship to consider what Witnesses have been produced upon this Table, who have sworn to such Intimacy and Freedoms with Lord *Altham*, that any Freedom between him and any Person whatever would not be wonderful or surprizing. This Witness was immaterial, and there was no reason for making this Observation, except to throw an Imputation upon the whole.

I come now to *Dunmaine-House* in the Beginning of the Year 1715, and, my Lord, in my Apprehension, at this distance of time, after so many Years, and the Death of so many Witnesses, after the Injuries suffered by the *Lessor* of the *Plaintiff*, as good an Account of the Birth of this Child is given as possibly could be. Your Lordship will please to observe, that Lady *Altham* is delivered in a Country where there are very few Neighbours, that she had a great Intimacy with Mrs. *Butler* of *Rofs* (that was her Place of Refuge when she fled from my Lord) Mrs. *Butler*, my Lord, is sworn to be in the House at this Delivery, and the Maid-Servants of the House were also present.

It cannot be denied that Lord *Altham* had very little Acquaintance in that Country; for from the Mouth of Colonel *Loftus*, it appears that he did not know him, that he never was at his House, that his Lady never waited on Lady *Altham*, and it is certain, the Persons of the best Rank in that Country never did visit there. Mrs. *Pigot* indeed did, and it is in Proof that Mrs. *Pigot* was Godmother to the Child. *Dennis Redmons*, one of the Servants, went for the *Midwife*, and though it has been said that he was not fit for such an Employment, I think it is not questioned, that he was a Servant in the House at the Time Colonel *Palliser* has proved that he was, and
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has gone a little further, for he endeavoured to prevent the Man from giving his Testimony upon this Trial.

Colonel *Palliser* appeared to be a zealous Friend of the Defendant; if this *Dennis Redmonds* was not in the House, and could not have proved something of very great Weight, would Colonel *Palliser* have used any Persuasions to have kept him away? No, the Reason was, that he knew *Dennis Redmonds* could prove more than they desired he ever should.

There are some Variations with respect to time in the Cross Examination of *Elenor Murphy* and *Mary Doyle*, who were present at Lady *Altham's* Delivery, and these Variations happened in Answers to a Number of Questions put to a *Chamber-Maid* and *Laundry-Maid*; these must be Servants in every great House, and those Servants generally do attend the Births of Children. But can any one say that *Variations* with respect to *Time*, or any one Servant coming after another, can have any Weight after a Term of twenty-eight Years? The *Fact* is the essential Thing, the *Fact* they cannot Err in, but Persons of their weak Understandings may be easily led into Mistakes by Gentlemen, whose Business it was to confound them. But I shall submit it to your Lordship, and to the Jury, from those very Variations, whether they don't shew that this Evidence could not be framed. Where-ever Evidence is framed, you will see an exact Agreement in material Facts, and little or no Recollection as to the rest. Here are Variations, very immaterial ones, things that are of no Weight in themselves. The single Question before the Jury is, Whether they believe Lady *Altham* was delivered of a Son? For I think it can't be questioned that she was with Child; and the Evidence appears to me very strong and full, that she was delivered of a Son. Mr. *Higginson* is a Witness to both; and though it has been objected that no Person of Credit has proved either *Fact*; yet no one Gentleman of the County, where Mr. *Higginson* lives, ever impeached his Character; he stands a Witness above Exception; he told your Lordship and the Jury with great Exactness, that he was on a certain Day at *Dunmaine*; that he saw Lady *Altham* big with Child;

Child; that she called for Wine; that he drank the first Glass to her Ladyship's Health; that being obliged to drink a second, he drank a *safe Delivery* to her Ladyship; and this on the 19th Day of *April*, 1715. Your Lordship, and the Gentlemen of the *Jury*, will take notice, that though the Gentlemen on the Part of the *Defendant* have attempted to blacken the Character of almost every Witness produced by the *Lessor* of the *Plaintiff*; yet when Colonel *Loftus* was produced on one Side, and Mr. *Colclough* on the other, there was not the least Imputation on the Character of Mr. *Higginson*. He does not stand alone; what he has said is confirmed by what Alderman *Barnes* has said, a Man of very great Credit; and though Mr. *Solicitor-General* would insinuate that his Memory was impaired, I appeal to your Lordship, whether his Answers were not as consistent as any Man's that was produced upon the Table. A Person of greater Credit was also produced on this Side, to prove Lady *Altham's* having a Son; my Lord *Mount-Alexander* did swear, that my Lord *Altham*, with an Oath, did inform him, *that his Wife had got a Son, which would make his Brother's Nose swell*. The same Declaration was made to Alderman *Barnes*, and to several others; and it is remarkable, if your Lordship recollects what Colonel *Pigot* said, that it was known in the Country, without any Controversy, that Lady *Altham* had a Son; his Stepmother, your Lordship observes, we shewed to be the *Godmother*. We did propose to ask him what his Stepmother had told him, but the Gentlemen of the Bar did oppose that Question, and your Lordship very properly, I believe, did rule it, that Colonel *Pigot* should not answer. But it is very well understood what Answer he would have given, and that was the Reason why he was stopped. A good deal has been said about Major *Fitzgerald*, as to his Testimony; he certainly must have a bad Memory; but though he had a bad Memory as to *Times*, yet as to the *Fact* he had a very good one. I hope his Memory as to the *Time* and *Season* of the Year shall not lessen the Credit of a *Fact* so well known and proved as this was.

Much has been said, and many Insinuations, as if we had suppressed the Testimony of *Joan Landy* the Nurse. We told the Gentlemen, and we must now repeat it, that the Woman was tampered with, and that they might examine her, if they pleased, but that we would not. I only mention it to shew why he did not produce her as a Witness, though she was here; and we offered her to the Gentlemen on the other Side, if they pleased, to examine her, and they declined it. My Lord, another Observation that has been made and urged to the Gentlemen of the Jury, was the Improbability that a Child of this Noble Family should be given to so loose a Woman as *Joan Landy*. I do confess it is sworn by Mrs. Heath and *Rolph*, that this Woman was a very infamous one, and supposed to be with Child by my Lord, by his Brother, by the *Dog-Boy*, or by several others; and it is insinuated, if not positively affirmed, that the Infamy of this Woman was well known to Lady *Altham*. Can this possibly be true? Her Ladyship came to the Country in *Christmas* 1713; *Joan Landy* then big with Child; yet afterwards this Woman continues near three Months in the House, if they swear true, and is delivered in *April* following. If Lady *Altham* knew the Infamy of this Woman, and that her Lord, and all those other Persons had had an Intimacy with her, can it be supposed that she would keep her in the House? But I will consider that another way, and think it highly improbable that she should have been in the House at all, when Lady *Altham* came to *Dunmaine*: You will please to consider, that it was publickly known she was with Child by my Lord; Can it be supposed that Lord *Altham*, immediately after Reconciliation with his Lady, should keep a Woman, six Months gone with Child, in the House, just under his Lady's Nose; a Woman that was supposed to be with Child by him? Can any body living believe that Fact? Or is not the Evidence on our Part much more probable, that a Woman suspected to be with Child by Lord *Altham* was removed from his House before his Lady was received in it; that a Report of her Marriage to a *Sailor* should be raised, and might easily have

have gained Credit with Lady *Altham*, who was quite a Stranger in that Country; and might not Lord *Altham* rest secure, that no body would dare to whisper their secret Suspicions into the Ear of his Lady?

My Lord, the next Observation that has been made is, that it is improbable that a Child of this Noble Family should be sent out of the House to nurse. This is a most extraordinary Observation. I believe it is known to every Gentleman of the Jury, by Experience, that Children of very noble Families are sent out of the House to be nursed; and for this very manifest Reason, that they may have pure and wholesome Milk from plain and simple Food; whereas Nurses, by living too luxuriously in those splendid Houses, are of infinite Prejudice to the Children they suckle. But it is urg'd, that the *Cabbin* of *Joan Landy's* Father was but very lately dress'd out for the Reception of this Child, that the Room was fitted up, and all the Ornaments given to it long after the House was pull'd down; And to evince the Certainty of this Matter, three notable Witnesses have been produced, to whose Testimony, on this occasion, I will beg your Lordship and the *Jury* to attend. It was not sufficient to deny this Fact. but the Witnesses must make this House so very mean, that it was not a Habitation even fit for a Beast to lie in; but unhappily every one of the three Witnesses differ in their Account: each of them differ from the other two. *Elms* tells your Lordship and the Jury, that it was a House with *two Rooms*, and the Partition was made with *Stones* and *Sods*; another Man says the whole House lay quite open. Mr. *Elmes* and the *other* allow there was a Door to the House, but the *third* Witness says there was only a *Bush* to keep the Wind out; each striving to make it as low as was possible. It has been mention'd also, that *Bartholomew Furlong's* Application for his Wife to be Nurse, was but two or three Weeks before the *Lying-in*, consequently, that the Appointment of *Joan Landy* to be Nurse was not early enough to give Time for the Reparation of her Father's *Cabbin*: But that Fact was mistaken, and the Observation quite unjust; for *Furlong* said, that he applied two or three

three Months before Lady *Altham* lay in, in which Time a Room might well be fitted up and made warm for the Reception of the Child; but since I have been obliged to mention *Furlong*, I must observe, that his Testimony goes to Lady *Altham*'s being with Child.

I have followed the Gentlemen with regard to the Observations they have made upon the Testimony given on the Part of the *Lessor* of the *Plaintiff*; and I shall take leave now to make some few Remarks on the Witnesses produced by the *Defendant*.

Your Lordship, and the Gentlemen of the Jury, will have it under Consideration, that if a Story was to be framed, the *Defendant* had it infinitely more in his Power than the *Lessor* of the *Plaintiff*; the one *absent* in *Slavery*, supposed to be *lost*, not even remember'd by many; the other possess'd of Honour and Estate, with the *Power* and *Influence* which attends them. *Heath* and *Rolph* are the two Witnesses that I shall lay before your Lordship and the Jury, to consider whether the material Part of their Testimony is probable. The Trial of *Masterfon* and *Walsh*, the *Pretender's* Men at *Wexford*, was a very remarkable Circumstance; it tallied pretty nearly to Lady *Altham*'s Delivery, and therefore if she could be fix'd at that *Affizes*, and there seen publicly, without the Appearance of being with Child, why then the Evidence on the Part of the *Lessor* of the *Plaintiff* must fall to the Ground: But if that Fact can't be true, then this is a made Story, and every thing that hangs upon it drops of course. See whether this does not appear to be framed. Mrs. *Giffard*, who is brought into this Scheme, tells your Lordship every Person that went to *Wexford Affizes*, when that Trial was; she names them; particularly *Rolph* the *Butler*, who swears to have been there also, tallies exactly with Mrs. *Giffard*, does not vary in a Tittle; but Mrs. *Heath*, who has a better Recollection, adds Mrs. *Giffard*'s Sister to the Persons that went to that *Affizes*, though not remembered by Mrs. *Giffard* or *Rolph*, or by any other. Mrs. *Giffard* swears positively, that Mr. *Colclough* sat by Lady *Altham* the greatest Part of that Trial. If Lady *Altham* had been in the Court-house
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at that *Affizes*, it was something so very extraordinary, that Numbers of People must have remembered it; yet no one Gentleman of the Country was produced to shew that Lady *Altham* was ever there. Mr. *Kerr*, who fix'd the Date of the *Affizes*, who was then the *Judge's Clerk*, and attended in the *Court*, he did not recollect that ever he had seen Lady *Altham* there; but what Mr. *Colclough* says is extremely material, and I hope the Gentlemen of the Jury will give it that Attention it deserves. He tells you, that he is very sure he did not sit by Lady *Altham* at that Trial, and gives this manifest Reason for it, that he was so much engaged in the Preservation of his near Relation, then upon his Trial, and to whom his Assistance was necessary, that he would not then have attended the fairest Lady in the Land. But, my Lord, this Fact stands contradicted flatly, and was calculated merely to shew that the Birth of the *Lessor* of the *Plaintiff* could not be at the Time we have proved. I forgot to mention that Mr. *Kerr* has fix'd the Trial of *Masterfon* and *Welsh*, on *Monday* or *Tuesday* in *Easter-Week*. Mr. *Higginson* swears positively that on the very *Tuesday* in *Easter-Week*, he saw Lady *Altham* at *Dunmaine*; and Mr. *Turner*, another Witness swears, that Lady *Altham*, was left at *Dunmaine* big with Child when my Lord went to that *Affizes*. Consider again, if the Testimony given by *Rolph* be probable at all; Lord *Altham* goes to the *Affizes* of *Wexford* not attended by his Gentleman; *Rolph* goes in the Place of him, and though he goes to supply that Place, he does not know where Lord *Altham* lodges, was not acquainted with any Place in *Wexford*, never saw Lord *Altham* in his Lodgings there, never dress'd him, nor did any Office for him, though, by the Evidence given, there was no other Servant there that could attend his Lordship.

Mrs. *Heath* is also flatly contradicted by Mrs. *Cole* as to the Miscarriage, as *Rolph* is by *Elmes* and *Dyer*, two of the Defendant's Witnesses, in the Account of *Joan Landy's* Father's House; yet those two Witnesses, with bad Memories in other Respects, have the most exact Recollection, after thirty Years, that ever I meet with. These two Persons give your Lordship and the Jury the infamous

mous Account of *Joan Landy*; yet in order to point out her bastard Child more particularly, they are each of them led to see who this Child was like, and each of them, in delivering their Testimony, use the same Words; such an Agreement in Words is happy, but it appears to me a wonderful Curiosity in Lady *Altham's Woman*, to examine whom the Child of the *Dog-Boy* was like; if it had not been necessary to insinuate that the *Lessor* of the *Plaintiff* was the Son of *Joan Landy*.

My Lord, the other Witnesses on the Part of the *Defendant* are several Persons of the Country; Mr. *Palliser* the old Gentleman, Mr. *Lambert* and his Lady, and Mr. *Palliser* the younger, and one Mr. *William Knapper* and *William Elmes*; and their Evidence is pretty near the same, as to one particular Fact. Every one of these People visited Lord and Lady *Altham* once a Fortnight, and there was an utter Impossibility that Lady *Altham* could have miscarried, or been with Child, or delivered of a Child without their Knowledge; and every one of them made use of the very same Expressions.

To be sure, seven or eight Witnesses may agree exactly in Words; but however, where-ever seven or eight Witnesses, with such very bad Memories as those had in every other Particular, happen, at the Distance of thirty Years, to agree in the Sameness of Expression; when they do, it must induce a Suspicion on the Minds of Men, that such Evidence was calculated; and I appeal to your Lordship, if those several Persons knew any thing else.

Aaron Lambert did not know when he was married, a Circumstance most remarkable in a Man's Life. Colonel *Palliser* did not know when he was in the *Barony* of *Forth*, and when in the *Great-Island*, nor how long in each Place. I won't mention Mrs. *Lambert*, I won't take up your Time with her, it is enough to name her; but I think Mr. *Palliser* the younger is too extraordinary to be passed over; he tells your Lordship, that about four Days before the Separation of Lord and Lady *Altham*, as he was riding with Lord *Altham* from *Birrstown*, about a Mile and an half from *Dunmaine*, Lord *Altham* imparted to him a most extraordinary Secret, that he was de-

terminated to part with his Lady. The Witness demands, Pray why, my Lord? And Lord *Altham* replies, why, I shall never agree with my Cousin Lord *Anglesey*, while I keep this Woman; and since I have no Child by her, I am determined to part with her, and not disoblige my Lord *Anglesey* on her account. And then he tells your Lordship, that he believed my Lord schemed to find him alone with his Wife, to make him the Occasion of parting.

Can any one living believe that Story? That Lord *Altham* would impart that Secret to the very Man he intended to use ill. But what puts it beyond any Contradiction, that it can't be true, is what he tells your Lordship and the Jury happen'd to him, when he was found in Lady *Altham's* Bed-chamber; that Lord *Altham* made several *Passes* at him, and that if he had not put them by, he must have been wounded, that they were directed at his Body; and you may remember the Question that was put to him, whether my Lord would not have run him thro' the Body, if he had not put by those *Passes*. He told your Lordship and the Jury, that he believed Lord *Altham* would not; but have stop'd half way, though at the same time he tells you, that the Servants were forced to interpose to save him from the Rage of my Lord: And yet, by pulling off his *Perriwig*, he discover'd to your Lordship and the Jury, that Lord *Altham* did leave a Mark upon him, whereby he might be known for ever after.

There is one thing more which I think deserves some Attention. It appears in Evidence on the part of the *Lessor* of the *Plaintiff*, that in order to make a Way to this House of the Father of *Joan Landy*, where the *Lessor* of the *Plaintiff* was nursed, that a Road was made, a convenient *Coach-road* for Lady *Altham's* Use. But, my Lord, what do Mr. *Rolph* and *Elmes* say on this occasion? Mr. *Elmes* first denied it, but after, a Confession was extorted from him, that there was a Road, and that it was gravelled; why then this Road must be made for another Purpose, and is made for the Conveniency of Mrs. *Giffard*; and *Rolph* and *Elmes* both positively swear that

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she always came by that *Cabbin* to the House of *Dunmaine*. But that must be false, or else Mrs. *Giffard* does not swear true, for she swore that she always came *another Road* by the *Bridge*.

As there are two Gentlemen to speak after me, I shall not trouble your Lordship with any further Observations on these Witnesses: If the Testimony of *Rolph*, *Heath*, and *Dyer*, be defeated, there is an End of this Cause; and I think they cannot have any sort of Weight or Credit with the Jury; but it has been mention'd, and mention'd to be sure as a Circumstance pretty extraordinary, that Lady *Altham* in her Distress has not taken such Notice of this Child, as might be expected from a Mother. My Lord, it appears to your Lordship, that Lady *Altham* did lodge at the House of one *Wright* in *Ross* after she left Captain *Butler's*;—that, I am sure, is not to be controverted. Why then, the Testimony of *Edward Lutwyche* will be extremely proper to mention, who there saw this Child by stealth brought to Lady *Altham*, as it appears from the manner in which he mentions it; for when he came the first time to take measure of the Child to make him Shoes, the Child was with my Lady; but the next time, when he brought them home, he was gone, and Lady *Altham* lamented that the Child was taken from her. In *Dublin* it appears, that Lady *Altham* did mention this Child; and it is extremely remarkable, that every circumstantial Part of the Testimony of the Woman who proves the Discourse of Lady *Altham* concerning her Son in *Dublin*, is confirmed by the Testimony of *Heath*, except the very Words relating to her Son. Alderman *King's* Testimony has been mention'd, and, without Question, he will have all the Weight and Credit that he very justly deserves; but it amounts to no more than this;—that though Lady *Altham* did mention her Separation, and that Part of her Family Affairs to Alderman *King*, yet she did not think fit to converse with him on the Subject of this Child, whom she could see only by stealth; for it appears, that by express Orders of the Father he was to be kept from her Ladyship. But it has been mention'd to your Lordship,

that the *Lessor* of the *Plaintiff* was deserted by his Father before she left the Kingdom, and that it is wonderful Lady *Altham* did not take Notice of him when the Child wanted the Care of a Mother. It is known in what Circumstances Lady *Altham* was; that she was by Sickness absolutely confined to her Chamber, destitute of Friends or Acquaintance, could have no Information but what she received from the Mouth of Mrs. *Heath*; and it appears in Evidence, that Lady *Altham* left this Kingdom in September 1724, and that the *Lessor* of the *Plaintiff* was in the Care of his Father in the Month of *August* preceeding, or in that very Month of *September*: It unquestionably appears so, as well by the Witnesses on the Part of the *Lessor* of the *Plaintiff* as of the *Defendant*; for *Arthur Herd*, an inflamed and zealous Witness for the *Defendant*, swears, that his Father Lord *Altham* had him in his Care in *August* after he went to *Inchicore*; so that a Month could not have passed from his being in the Care of his Father till Lady *Altham* left the Kingdom: And, my Lord, in her Circumstances, and quite forsaken, almost deprived of any Support, not able to stir herself, it is not wonderful that this Lady did not hear of the Misfortune of her Child before she left the Kingdom.

Your Lordship and the Jury will take Notice and consider the Affection and Tenderness shewn by Lord *Altham* to the *Lessor* of the *Plaintiff*, a Regard not usually paid to illegitimate Children; that he was educated like a Son of a Nobleman is uncontroverted, and had great Care taken of him: And I must mention what Mr. *Misset*, a Man of acknowledg'd Veracity, has sworn.—that in his Presence Lord *Altham* said, I hope you will live to see that Boy one Day Earl of *Anglesey*. His Treatment of him at *Kinnea* and *Carrickduffe* is proved by Mr. *Cavenagh* and Mr. *Byrne*, two Witnesses above Exception; that he was treated as my Lord's Son, and introduced to them as such; and one of the Witnesses mention'd, that he would have resented it extremely if he had been brought to him as a natural Son. Lady *Altham*'s Circumstances after she went to *England* have been represented to your Lordship by Mrs. *Heath*, and she tells your Lordship she had

had 100 l. a Year devised by the Duke of Buckingham, who died in the Year 1720, which was to cease on the Death of Lord Altham; and after the Death of Lord Altham she became destitute of any Support whatsoever, and lived upon the Bounty of the Duchess of Buckingham. It is true she lived two Years after her Lord, but in such a wretched Condition, deprived of her Limbs, and abandon'd by her Friends, and probably never heard of her Son's Misfortunes; yet, because in two Years she did not assert the Birth-Right of her Son, an Inference is urged that he was not her Son: But it appears to the Gentlemen of the Jury how little she was able to support the Interest of the Lessor of the Plaintiff, however great her Inclination to do it might be.

The Gentlemen on the other Side have urged, that it was for the Interest of Lord Altham to have a Son: I apprehend that Fact to be clearly otherwise, and shall therefore beg leave to lay it before your Lordship and the Jury as clearly as I can.—By the Will of James Earl of Anglesey, of the 14th of May 1701, the Estate was limited to Arthur Earl of Anglesey for Life, with a Remainder in Tail to his first, and every other Son; with a Remainder to Richard Lord Altham for Life, Remainder in Tail to his first, and every other Son. By that Will, to be sure, all the Issue of Richard Lord Altham were Tenants in Tail. Richard Lord Altham died the November following, and upon that Accident, James Earl of Anglesey made a new Will on the 23d of that Month; it was a Transcript, Word for Word, of the other, and instead of Richard Lord Altham, Arthur Lord Altham was inserted; and then Arthur Lord Altham had a Remainder for Life, with a Remainder to his Issue Male, with a Remainder to Charles Annesley; and if that Will had stood, the present Defendant was quite out of the Case: But on the 9th of December following Earl James makes a new Will, and by that Will re-publishes his Will of the 14th of May, except what was altered by him in the Will of the 23d of November. Do not the Limitations then clearly stand thus? To Arthur Earl of Anglesey for Life; Remainder in Tail to his first, and every other Son; Re-

mainder to *Arthur Lord Altham* for Life; Remainder in Tail to his first, and every other Son; with a Remainder in Tail to the second Son of *Richard Lord Altham*;—so that the Remainder in Tail only to the second Son of *Richard Lord Altham* could take place, and it is under that Remainder that the present Defendant has claim'd the *Anglesey Estate*. So that it was absolutely for the Benefit of *Lord Altham*, in order to raise Money, to desert his Son and to disown him: By that means the Purchasers had the Chance of the present Defendant to confirm their Title: For if *Lord Altham* had been consider'd as bare Tenant for Life, very few People would have purchased from him; for *Arthur Lord Anglesey* must have been esteem'd as good a Life as *Arthur Lord Altham*, and in fact was better, for he outliv'd him ten Years.

If Mr. *Wall's* Testimony be true, he tells your Lordship that he saw the Son of *Joan Landy* at *Ross* when five Years old, in a mean Condition: That was impossible; for all the Witnesses agree he was taken great Care of at that Time at *Kinnea* and *Carrickduffe*; and when my Lord mov'd from Place to Place, *Herd* says, that the Child was always carried with the Family. I will not take up your Lordship's Time, but only add this; that it was greatly to the Advantage of *Arthur Lord Altham*, in order to raise Money by selling Reversions, to disclaim his Son. Your Lordship will consider what has been said out of the Mouth of their own Witnesses; that Miss *Gregory* had such an Influence over him to make him do what she pleased; which was another Reason for disclaiming that Son, to gratify an imperious Mistress.

My Lord, it has been said, that the Transportation of the Lessor of the Plaintiff by the Defendant, if it was proved, can only create a Suspicion in the Minds of Men. I take upon me to say, that Actions speak better than Words; Actions must be true, they speak strongly the Mind. I won't repeat the Testimony; but there is such a Consistency in all the Witnesses to the Transportation, that there cannot be the least Doubt of it. I shall only take Notice of the Entries in the *Tholsel Books*. It has been mention'd that *James Hensley* and *James Ansley* may

may be one and the same Person. Your Lordship, I'm sure, attended to the Examination of Mr. *Gonne*, and, if what he swore be true, it is impossible there could be that Mistake. He swears, that before any Person is indented, my Lord Mayor asks the Father's and Mother's Name, to know if they are living. Would Mr. *Gonne*, who is a very acute, good and honest Officer, or could he have ask'd that Question, and have mistaken *Hensley* for *Ansfley*? — A Man well acquainted with the Father of the Plaintiff, and if he had been a Son any way, he would have known very well how to have written his Name. There is nothing in that Observation, for the Names are as different as any Names in the World. But it was ingeniously observed, that there was no such Name returned from Mr. *Stephenson's* Ship; but Mr. *Crommy* informed the Jury, that many of the indented Persons run away, and it appeared in Fact, that many of them were gone before the Ship sailed. It has been objected, that it is improbable the Defendant should commit such a wicked Act in the open Day; but it is within most People's Observation, that an Infatuation often attends the Commission of great Crimes, and the Proof is so strong here, that there is no Doubt but the Defendant did the Act. Mr. *Giffard's* Testimony is full and clear, and there out of the Defendant's own Mouth, he confessed him to be the Son of Lord *Altham*, and Heir to his Title and Estate; and though in a Passion a Man might say, he would come to a Composition with a Man, to defeat the Hopes and Expectations of others, yet the latter Words could not be added, that he was his Brother's Son and was Heir to the Estate. If the Jury are satisfied that our Evidence carries Conviction with it, though it be of the utmost Moment, and the Case is of greater Importance than ever was tryed in this Kingdom; yet the Greatness of the Case, will only make them more circumspect to do that which is Right and Just; and I must say that the Acts of the Defendant, weaken every part of his Proof, and strengthen every part of ours.

MR. SERJEANT TISDALL,

My Lord, and Gentlemen of the Jury,

I shall beg leave to offer a few Words on the same Side. It has been very properly observed, that this is a Cause of the greatest Consequence, that has ever come to Tryal in any *Court of Justice*; but I must beg leave to say, that the Importance of the Cause can in no sort change the Nature of the Evidence, the same Rules of Law and Reason which prevail in Cases of less value, must take place in this. Gentlemen, no doubt, will take into their Consideration, in the Determination of this Question, the many Difficulties which must attend the *Plaintiff* in an Evidence of this Nature; from the Distance of the Time we must necessarily suppose the Deaths of many Persons, who could have given clear and unquestionable Testimony of the Matter in Question. Besides, even those Persons that are left to give Testimony, must now have forgotten many Circumstances of Time and Place, which would have cleared up the Facts they swear to beyond Dispute. 'Tis therefore hoped the Jury won't, in their Consideration of this Evidence, regard any trivial Variations with respect to Time and Place, or other such Circumstances; the Fact may remain in the Mind of the Witnesses, though they can fix neither the Time, Place, Persons present, or any other of those trivial Circumstances, which 'tis impossible should remain in the Minds of Men at this Distance of Time. Wherever there is a Variation with regard to material Facts, that must proceed from a corrupt Mind, but Variations either with regard to Time, Place, and such like Circumstances may, and must happen to People the most uncorrupt and upright. But besides these Inconveniencies, which are common to all Causes to be examined at so great a Distance of Time, there are some particular Misfortunes which attend this Cause in particular. You will consider, Gentlemen, the Circumstances of this noble Family, that the Father of the *Plaintiff* married a Lady that had

no Relations, no Friendships in this Country; from hence it must follow, that there were no Relations on the Side of the Mother, from whom the Particulars of this Birth may be expected. The same thing must be observed on the Side of the Father, who though of a noble Family, yet he lived in a Country where none of the Relations of the Family were resident, and consequently none could have been present at the Birth of this Child. These are the Witnesses, from whom the best Account of this Matter might have been naturally expected, but from the Circumstances of this Case, it was impossible to find such on this Occasion; nay you must observe, that the *Defendant* has not attempted to produce any Witnesses of that sort; and it is not to be doubted if there were any such, they could and would have been produced on one Side or the other to clear up this Question. But there is another Inconvenience, which has arisen in this Case, from the Circumstances of the Parties, *Plaintiff* and *Defendant*. Gentlemen, you will observe that the *Defendant* is not only a *Peer*, but in Possession of one of the most considerable Estates of this Country; you will consider how very unwillingly People, who know the Fact, would offer themselves in Evidence against a Person of his Rank and Power. On the other Side, the *Plaintiff* appears to have been absent for about 15 or 16 Years. This is admitted of all Parts that absent he was from thence, even supposing his Birth to be as he says, it must follow that he must be ignorant of the proper Persons that could make it appear to the *Jury*. But this Misfortune has not only deprived him of much Evidence that might have been material in this Case, but has laid him open to another Inconvenience, of the greatest Consequence; of being imposed on by Persons who, either from hope of Gain, or possibly from some wicked Design to destroy him, might offer themselves as Witnesses; for what other Method could he take but to receive such Accounts as the Persons voluntarily came and offered to him; and though possibly there might be reason to suspect the Truth of some part of what has been offered, he has done every thing incumbent on his Part, if he has produced the

whole, without Art or Disguise, and if no wicked Proceedings, no improper Methods to obtain Evidence appear to have been employed, nothing can be imputed to him; nor can his Birth, which has been proved by so many Witnesses of undoubted Credit, by so many Circumstances which cannot deceive, become doubtful from any Suspicion of the Veracity of some of the Witnesses, and the Candour of the *Plaintiff* in this particular, appears in the strongest Light from the Evidence of the *Defendant*. Three or four of the Witnesses for the *Defendant* have made use of the very Words, in which Application was made to them by the *Plaintiff's* Agents, to give Testimony on this Occasion. Has there one of them pretended to say that any improper Application was made to him? No, not one, except Mr. *Rolph*. His Account indeed is, that when Mr. *McKercher* applied to him, one of his first Questions was, whether he would chuse a Lieutenancy? But is it to be presumed, that a Person of the Art Mr. *McKercher* is represented to be, would make such an Offer at first Sight? Is it possible that he should think of offering a Reward of that Nature? If he had a Mind to induce this Person to give Evidence, would not he have made offer of something in his Power to bestow as a Recompence for his Labour? Is it possible to conceive that he should have made an Offer of this Sort, which if discovered, must have ruined all his Expectations of the Success of this Cause; and this in the Presence of other People, and to a Person with whom he was never acquainted before? Besides, if it were intended to procure Evidence in this Manner, there are many Persons examined for the *Defendant* in this Cause, of less Consideration and more likely to be tempted than *Rolph*; for he tells you he is settled in a way in *England* better than a Lieutenancy. And if Mr. *McKercher* could have been capable of such a Proceeding, 'tis natural to suppose he would have made his Attempts on Persons of a meaner Sort: But in the whole Course of this Evidence, it has not been once insinuated that he made any other Attempts of this Nature, though Mrs. *Heath* and others mention him to have applied to them, as every honest Man should have done. But if there

there was Occasion to give one Instance more of the Candour of the *Plaintiff* in this Respect, we can readily do it; and that is the producing of Mrs. *Blake* upon the Table. Gentlemen, you observed that she could give no Account in favour of the *Plaintiff*, but howsoever, this I must beg leave to insist upon, that the producing an Evidence of this Sort, is an incontestible Argument of the Sincerity of Dealing on the *Plaintiff's* Side, and a Proof that all the Evidence that he could get of any Persons likely to give an Account of this Transaction, were fairly produced to the *Jury*. After these general Observations, I shall beg leave particularly to consider the Evidence that has been offered in this Cause on both Sides the Question, and I shall consider it upon the Principles I have now laid down. As much immaterial Evidence must have been offered on both Sides, I shall confine myself to that Part of the Evidence, which seems to me to be material to the Point, and upon summing up the whole, I hope I shall be able to shew that even the positive Evidence as to the Birth of the *Plaintiff*, greatly outweighs the Evidence on the other Side that denies it. But even if there remained a Doubt upon the positive Evidence, I hope I shall be able to shew you, the Circumstances are of such Weight in our Favour, as to determine the Point, and leave it without Controversy, that the Title of the *Plaintiff* ought to take place. The positive Evidence produced, who were present at the Birth, are only *Elenor Murphy* and *Mary Doyle*; these agree in all material Circumstances, there may possibly be some trifling Variations, but they are of such a Nature as cannot overturn the Force of their positive Testimony. They both agree that *Dennis Redmonds* was the Person employed to bring the *Midwife*, and their Testimony is confirm'd by him. There is a Circumstance with Regard to his Testimony, which is, that what he says obtains some new Weight from the Account given by Colonel *Palliser*, who says, that he enquired of him what he knew as to this Fact, and he told him he was employed to bring a *Midwife*; this Conversation was before the *Plaintiff* went into that Country, or *Dennis Redmonds* could possibly have any Knowledge of

what might be necessary on this Trial; so that I must beg leave to say, this is a very strong Circumstance to confirm the Veracity of his Testimony. This Account of the Birth is further confirm'd by the Testimony of *John Scot*, who says, he was a Servant of *Mrs. Pigot*, and that he was sent several times to know how the Child and my Lady did. It is further confirmed by *Christopher Brown*, the Servant of *Mr. Anthony Cliff*, who waited at the Table the Day of the Christening. The Nursing of the Child is positively sworn to by *Mary Doyle*, *Elenor Murphy*, *Dennis Redmonds*, and *Joan Laffan*; their Account is, that the Child was nursed by *Joan Landy* in a *Cabbin*, at a small Distance from the House of *Dunmaine*; that the Child was constantly visited by the Father and Mother; and they confirm this by a particular Circumstance, of a *Coach Road*, made upon this Occasion to the *Cabbin*; this Particular of the Road is confirmed by all the Witnesses that have sworn to the Birth, and by *Joan Laffan*; and as this is a very material Circumstance in this Cause, and the more so, from the Pains which appear on the other Side to avoid the Force of it, I shall beg leave shortly to consider the Evidence on both Sides. As to this Point, on the Part of the *Plaintiff*, the four Persons I have mentioned swear positively to this Circumstance; and by the Evidence on the other Side you must observe, Gentlemen, how very apprehensive the *Defendant* appears to be of its Weight. Accordingly, *William Elmes*, and others, have been brought to controvert this Point. *Elmes* at first positively denied there was any *Road* made, but afterwards upon his Cross-Examination, he allowed that a *Road* was cast up, but that it was never paved; this is a Contradiction to what he first affirmed; and at the latter End of his Evidence, he again varies from himself; he tells you there was no *Road* made, but *Gaps* opened in the *Ditches* for a Convenience to visit *Mrs. Giffard*. *Rolph* likewise has been examined as to this Point; and he gives an Account, that this Road was made before the *Cabbin* was built; he gives the same Account of the Occasion of making it, in order to visit *Mrs. Giffard*; but in another Part of his Testimony he says, that the *Cabbin* was built three

Quarters of Year before my Lady came to *Dunmaine*. How can this be consistent? If the *Cabbin* was built before my Lady came, and the *Road* made before the *Cabbin* was built, how could the *Road* be made to visit Mrs. *Giffard*? Mrs. *Giffard*, when she comes to be examined, positively contradicts both these Witnesses. She says, that she never travelled that *Road*, nor knew of any such, and that she always went the *Road* over the *Bridge*; this Account directly contradicts what has been sworn by the other two Witnesses, and shews you what Stress is to be laid upon their Testimony; this shews you, that, even supposing their Accounts consistent with themselves, which they are not, this *Road* could not have been made for the Purpose they pretend; consequently it must have been made for another Purpose; our Witnesses have pointed out the Purpose, the Truth of which is much confirmed by the Labour that appears on the other Side to find out another Use; and, in my Apprehension, this must give great Weight to their Evidence, not only in this Circumstance, but in what they have said of the constant Visits that were paid by the Father and Mother to this Child during its Residence at the Nurser. If there really were no such *Road*, or if it was made on any other Occasion, whence could proceed the Difficulty, with which the Witnesses of the *Defendant* have been brought to admit it, or the Pains they have taken to account for its Use, in a Manner now confessedly different from the Truth. There have been some Objections made to the Witnesses that have been produced as to this Point, upon the Part of the *Plaintiff*: There was one Objection, which ran generally through them all, the Meanness of their Station and Employments. What I have observed, in the Beginning, of the Circumstances of this noble Family, will, I hope, sufficiently shew the Impossibility of finding Witnesses of a higher Rank, as to this Point; and the Station of the Witnesses produced, gave them an Opportunity of knowing the Facts they now prove. It has been objected to *Dennis Redmonds*, that he was not a Servant in this Family; but now it must be admitted, that he was a Servant, and the

properest to go of such a Message. There are some other Objections made to the Testimony of *Elenor Murphy* and *Mary Doyle*, arising from small Variations in Circumstances of Time and Place; but Objections of this Nature, I am perswaded, can have but little Weight with you at this Distance of Time.

Let us now consider who the Persons are, that are produced to contradict this Evidence: These, Gentlemen, are *Thomas Rolph*, *Owen Cavenagh*, *Anthony Dyer*, *Martin Nief*, and *Mrs. Heath*. These, Gentlemen, are the only Persons produced on the Part of the *Defendant*, that were, or pretended to be, Servants at the Time of this Transaction, or to deny positively the Birth of this Child; they all swear they were then Servants in the Family, and that there was no Child born at that Time; but they are not satisfied with this, they go something further, and swear, that during the whole Cohabitation there never was any *Miscarriage*; that my Lady was never with Child. Gentlemen, you will observe, that as to this Fact they stand not only contradicted by the Witnesses, who have sworn to the Birth of this Child; but likewise by all the Witnesses who have been produced on our Part, who have sworn to have seen my Lady at any Time with Child, or who have proved her to have miscarried; so that unless their Evidence shall counterbalance the Evidences of all those Persons taken together, with those who have proved the Birth, their Evidence, in this Case, must necessarily be destroyed.

You'll observe, Gentlemen, that *Alice Bates*, *Mr. Turner*, and *Mr. Higginson*, swear to the Pregnancy of my Lady *Altham*. *Alice Bates* swears positively to the Pregnancy in *Dublin*: Some Gentlemen, indeed, have objected the Improbability of her knowing it; but if you will reflect on the Freedoms Ladies of Fashion sometimes use to such Servants as are constantly in their Chamber, this Objection will be removed. It appears, that she was Maid Servant, and attended in the Chamber of *Mrs. Briscoe* at the Time of the Reconciliation, and continued in the Family, when my Lady liv'd at *Mrs. Vice's*; is it impossible, that this Lady should have fallen into
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some Degree of Freedom and Familiarity with this Woman, who resided so long in the same Family? But besides this, Mr. Turner swears, that he went to *Dunmaine* immediately after his Marriage, and that he there saw my Lady big with Child; this Circumstance makes it impossible that he should be mistaken as to the Time. There is one Witness more positive to this Fact, this is Mr. *Higginson*; he was Agent and Manager for the late Lord *Anglesey*; this Employment, and the Dependance that this Family must be supposed to have had upon the other Principal Branch of it, must have gained him some Admission to the Lord *Altham*; but besides this, you see, by his own Account, that he came bound for the Sum of 70 l. for the Payment of the Chariot, which my Lord bought in *Dublin*; this alone was sufficient to give him some Degree of Familiarity. The Occasion of his calling at the House is natural. If you have any Dependance on his Testimony, which is confirmed by so many Circumstances as would give it Credit, even if there were a Doubt, which no one has yet attempted to insinuate, of the Honour and Veracity of this Witness, you can have no Doubt but my Lady was with Child: There has likewise been full and sufficient Evidence produced as to the Miscarriage of Lady *Altham*. Mrs. *Cole* swears positively to it. It is objected, that a Lady of the Age she was then of could not be acquainted in Things of that Nature; but she gives you an Account of the Occasion of my Lady's miscarrying, of her Mother's being called up in the Night to her Assistance, and of her seeing the *Abortion* the next Morning herself, in so clear a Manner, that there can be no Reason to doubt the Truth of it. Is it at all improbable, that the natural Curiosity of a young Lady of that Age, might lead her to observe Circumstances, which might have been neglected by a Woman of an Age more advanced? A Woman of more Years and Experience could have no Reason or Desire to see the *Abortion*, unless she suspected some Fraud, and desired to be convinced of the Truth of the Fact; but as this young Lady had never before seen a Thing of the like Sort, her Curiosity might naturally lead her to see this. The Character

rafter of this Witness is unblemished, and sure there is no Improbability in this Story, which can raise a Doubt of the Truth of this Part of her Testimony: Besides that, her Testimony is further confirmed by Mrs. *Briscoe*, her Sister, who said, she was informed by her Mother, after she came to Town, that my Lady had miscarried: I can't say, that *Hearsay* is Evidence, and what Force this Account may have upon your Minds, I must leave to your own Judgment; but you will observe, that this Conversation was at a Time when it could not be calculated, or intended to serve any particular Purpose. Therefore, if you believe her Testimony, that she was told so by her Mother, it will have great Weight to confirm the Testimony of Mrs. *Cole* as to this Point. There is a Circumstance, which has been mentioned, in which Mrs. *Cole* and Mrs. *Heath* contradict each other; that is, whether my Lord and Lady went into Lodgings from Mrs. *Briscoe's*, or directly to *Dunmaine*; but this is a Circumstance of no Consequence at all in this Cause, and therefore neither of them can be supposed willfully to deceive you in it; for this Reason, I will make no use of it to invalidate the Testimony of Mrs. *Heath*.

I shall now beg Leave to observe shortly on the Testimony of some of the other Witnesses produced on the Part of the *Defendant*. *Owen Cavanagh* tells you he was often absent, and once, on a Quarrel that happened between my Lord and his Brother, for a considerable Time; he can't tell at what Time this happened, and therefore it is possible he might have been absent at the Time of the Birth of the *Plaintiff*. As to *Thomas Rolph* it is sworn positively by several Witnesses, that he was not *Butler* at this Time; and not one Witness, except Mrs. *Heath*, swears positively, that he was then in the Service; so that the Time of his leaving my Lord's Family, whether before or after the Birth, stands only upon his own and Mrs. *Heath's* Testimony; and if this be doubtful, it will in some Degree lessen the Credit of his Evidence with Regard to the Birth; besides that, he plainly appears to have calculated an Excuse as to the *Road*, which now appears to be undoubtedly false; nor could this proceed from any

Error or Mistake, and therefore an Objection from it must arise to his whole Testimony, which will destroy any Credit that otherwise might have been given to him. As to *Anthony Dyer*, he also swears positively, that there was no Birth; but I shall have Occasion hereafter to observe a Circumstance in his Testimony, where he contradicts all the other Witnesses, not only of our Side, but even of his own, so positively, and in a Fact so material, which was certainly within his Knowledge, that it must entirely destroy the Credit of his Testimony. Therefore, Gentlemen, if you will weigh the positive Testimony that has been given on both Sides with Regard to the Birth; on the one Side, you will find *Mrs. Heath, Rolph, Cavanagh, Dyer and Nief*; on the other Side, *Dennis Redmonds, Mary Doyle, Elenor Murphy*, confirm'd by *Christopher Brown*, and *John Scot*, all are positive as to the Birth. Besides, as to the *Pregnancy and Miscarriage*, there are *Alice Bates, Mrs. Briscoe, Mr. Turner, Mr. Higginson*, and *Mrs. Cole*; and I hope there can remain no Doubt but these, taken together, must greatly outweigh the Evidence that has been given as to this Point on the Part of the *Defendant*: They have all sworn positively either to the *Pregnancy, the Miscarriage, or the Birth*; they are positive Witnesses to Facts, and those Facts are positively denied only by these four or five Servants of the Family; there are none other that take upon them positively to deny them. There are indeed some other Witnesses that give circumstantial Evidence on both Sides; but these are the only positive Witnesses, who swear to Facts within their Knowledge. The Consequence I shall draw from thence, is this; that if this Point is to be determined by positive Evidence only, if any Credit is to be given to any of the Witnesses who have sworn either to the Birth, Nursing, Pregnancy, or Miscarriage, the Consequence must be, that all the positive Witnesses produced on the other Side must have sworn false, as to a Fact certainly within their Knowledge. Hence it follows, that unless these four or five Servants, that have been produced on the Part of the *Defendant*, shall be of sufficient Credit and Weight, even supposing no other Objection

to their Evidence ; unless, I say, their Credit and Weight is of sufficient Force, not only to outweigh the other Servants of the Family, but also the Testimony of Mr. *Higginson*, *Alice Bates*, and Mrs. *Cole*, the Weight of the positive Evidence is clearly on our Side in this Question. But though it has been said that positive Evidence only is to be admitted in a Case of this sort ; that unless the Birth be positively proved, notwithstanding any Circumstances that may give Credit to it, the Superstructure must necessarily fall to the Ground ; I must beg Leave to say, that Circumstances must have great Weight in this Case, for whenever there is contradictory positive Evidence in any Case, you must judge on which Side the Truth lies, not only from the Credit of the Witnesses, but from all other Circumstances that may give Light to the Point in Contest. This is a Rule that seems to have been admitted in this Cause, by the Proceeding of both the Parties ; for you will observe that the positive Evidence has taken up a very short Time of this Trial : Each Party has let himself into all the Circumstances that he imagined could give Weight to his positive Evidence. Accordingly, the *Defendant* has produced several Persons to shew the Improbability of such a Birth without their Knowledges, and such Evidence would not have been offered, if not judg'd material for them to disprove the Birth. I shall therefore now beg Leave to consider the Force of this circumstantial Evidence, and the several Persons produced on this Occasion. The first Person on the Part of the *Defendant* was Colonel *Loftus* ; he told you that he lived seven or eight Miles distant from *Dunmaine*, that he never visited there, and had very little Acquaintance with my Lord *Altham* or his Family : It is true, he said, that he never heard there was a Child ; is it improbable that, though the Fact was really so, he might never have known it ? Two other Witnesses of Figure and Fortune have been produced to this Purpose,—the two *Pallisers* ; and Gentlemen must observe from the Father, how very solicitous he was to give Evidence on behalf of the *Defendant* : I won't say that this had any undue Influence upon his Mind ; but whatever Regard may be had to his Rank and Condition, this must

must necessarily throw some Sort of Suspicion on his Evidence. At first he said, that he constantly visited at *Dunmaine* once a Week or a Fortnight; a Fortnight or three Weeks was the longest he could have been absent. In his Cross-Examination he gives you an Account of his being a Member of *Parliament*, of his building in a distant Part of the Country, and that he does not know but he might have been three Months from this Family without visiting them at all. Thus he flatly contradicts himself, and obliges us to look upon every Part of his Evidence with Suspicion. He likewise gives an Account of his sending for *Dennis Redmonds* on this Occasion; he ask'd him what he had to say, and when he was answer'd, that he was sent for a *Midwife* to deliver my Lady, Colonel *Palliser* thought he should not appear, and that that Evidence was not material. Why should Colonel *Palliser* take the Trouble to advise this Man not to appear? Why should he advise him that this Testimony would be immaterial, unless his Mind was strongly biased to one Side of this Question? If you look into the Examination of Mr. *Palliser* the Son, he gives an Account that he had often seen my Lord at his Father's House, but not my Lady: This shews there was not that Intimacy between the Families that Colonel *Palliser*, in the Beginning of his Evidence, would give the Jury to believe: I am afraid it must be admitted that Mr. *Palliser* the Son, had too great an Intimacy in this Family; but you'll consider, from the Account he has given, whether his Intimacy was such as to give Credit to the whole of his Evidence. The Improbability of the Story of my Lord's *Altham's* Conversation with him on the Road, has been already observed by Mr. *Marshall*, and I shall only add one Circumstance: Mr. *Palliser* has declared, that before this Time my Lord *Altham* never spoke to him with regard to any Affair relating to his Family; he was ignorant of the Dispositions of Lord *Anglesey* towards Lord *Altham*; had not even heard whether they stood upon good or bad Terms. He says, that there was no previous Discourse on the Road to give Occasion for my Lord to make such an odd Declaration. These are Circumstances that make this Story so improbable, that you can give it
very

very little Credit; and if his Credit in this Part of the Testimony be destroy'd, the rest of his Evidence must necessarily have but little Weight. I must observe one thing more with regard to this Witness; it was affirm'd by *Joan Laffan*, that he had the *Cap* of Lord *Altham* on the Morning of the Separation: She described the *Cap*, and said that he had his *Hat* and *Wig* on when he was in the Room with Lord *Altham* at Breakfast, and when my Lord return'd, was found with my Lord's *Cap*. You must observe, that when he came to be cross-examin'd as to this Matter, he could not take upon himself to remember any thing relating to it. This is a Circumstance which must have been of great Consequence in an Affair probably the most remarkable that ever happened in his Life, and must have made a proportionable Impression on his Mind. Is it possible he should not be able positively to answer as to the Truth of this Matter? A Circumstance so material to him could hardly have escaped his Memory; and yet when it was pressed to him, tho' he could not positively deny it, he was quite ignorant. There is one Observation more that I would beg leave to make as to the Testimony of these two Gentlemen, the *Pallisers*; they tell you of a most irreparable Injury offer'd by Lord *Altham* to Mr. *Palliser* the Son on this unhappy Occasion: If it was without Cause, it must have occasioned a suitable Resentment in the Minds of both. Is it not possible to imagine that this Resentment may in some sort still continue to the Descendant of the Family? May it not still have some Influence upon their Minds? You will therefore consider whether they may be look'd upon as Witnesses entirely free from Prejudice on the Side of the *Defendant*: There have not been produced as to this Point any other Witnesses of equal Credit or Reputation in the Country. There have been indeed produced *Aaron Lambert* and his *Wife*, and Mrs. *Giffard*: As to *Aaron Lambert*, his was a loose kind of Testimony, and of little Consequence to the Case: As to Mrs. *Lambert*, you'll observe with what Caution Colonel *Loftus* gave his Opinion of her; he said, he thought her Testimony was not much to be depended upon. I shall take no particular Notice of the Testimony given by

a few more Witnesses of the lower Rank, as to the Reputation of the Country; but as Mrs. Giffard mentions a Circumstance, which, if true, must have very great Weight in this Cause, I shall beg leave shortly to observe on that Part of her Evidence: She mentions that my Lady *Altham* and she went together to the *Affizes* at *Wexford*; two other Witnesses have been examined to support this Part of her Testimony, *Rolph* and *Heath*; they are all equally cautious in this Part of their Evidence; none of them can take upon them to say the Time of the *Affizes* to which they went, but refer to the same Circumstance, that the Pretender's Men were then tried. As to *Rolph*; tho' he says he went thither as a Servant, to attend my Lord, he does not remember to have seen his Lord at *Wexford* during the *Affizes*, nor did he know his Lodgings. If that was the Case, the Question might properly be ask'd what Business he had there. Mrs. *Heath* mentions a new Person, not taken Notice of before, who went with them to the *Affizes*; but this has been observed before, and I shall speak to it no further. I shall only mention, that Mrs. Giffard has sworn positively that Mr. *Colclough* sat by them during the Time of the Tryal, at which, she says, they were present; that Part of her Evidence has been fully contradicted, and you will judge what Credit can be given to a Fact proved in this manner; you will observe besides, that it is directly contrary to the positive Evidence of Mr. *Higginson* and Mr. *Turner*, one of whom swears he saw my Lady with Child at *Dunmaine* during the Time of these *Affizes*: This Fact therefore, if there was no Contradiction among the Witnesses produced to prove it, will entirely depend upon the Credit of the Witnesses: It will depend upon Mr. *Colclough*, Mr. *Higginson*, and Mr. *Turner*, on the one Side; *Rolph*, Mrs. *Heath*, and Mrs. *Giffard*, on the other: And I shall fairly submit it to you which deserves Credit. Besides what I have mention'd, there have been Witnesses produced to shew the several Declarations of my Lord *Altham* that he never had a Child, and his Wishes to have one. Colonel *Harman's* Evidence, to this, is of little Consequence, for he can't tell the time of my Lord's Declaration to this Purpose, whether it was

before or after the *Queen's* Death : And therefore that can be no ways material to this Case. They have likewise produced a most *worthy Witness*, one *Father Downes* ; but his Testimony will, for many Reasons, have very little Weight with the Jury ; as to this Point, he only says, that he heard my Lord, about a Year and a half after he came to *Dunmaine*, which was before the Birth of the Plaintiff, wish to have a Son. Colonel *Wall* says, that he heard my Lord wish for a Son in the Year 1725, and it would have been for his Benefit to have had a Son then : This last Part of his Evidence depends on a *Point of Law* which has been spoke to already, and therefore I shall not enlarge upon it. Colonel *Becket* has likewise been produced, and he says, that my Lord wished his *natural* Son LEGITIMATE. I shall not trouble you with any Observations upon Evidence of this sort, but shall rest it on your own Observations, on the Witnesses themselves, and the Nature and Circumstances of their Testimony. The Declaration said to have been made on the Road to *Palliser*, has already been taken Notice of : There is another mention'd by Mr. *Medlicott*, who swears that my Lord said, *As I have no Child of my own, nor know not that I ever shall, I don't care if the Devil had the Estate after I am dead.* It would seem very strange that my Lord in publick Company should make a Declaration of this Sort concerning a Child then confessedly entertain'd and educated as *legitimate* ; and I would submit it to the Gentlemen of the Jury,—suppose the Words were taken, *if I had no Child*, instead of, *as I have no Child of my own*, I don't care what became of the Estate,—a Mistake easily to be supposed ; that this will make this Testimony agreeable to all the others that give an Account of this Period of Time. These are all the Witnesses I remember to have been produced to confirm the positive Testimony that has been given on the Part of the *Defendant*. I shall now mention the Witnesses on the other Side to this Point ; and first, Mr. *Pigot* heard it bruited (that was his Expression) in the Year 1715, that Lady *Altham* was brought to-bed of a Son : You will consider, Gentlemen, the Opportunity this Gentleman had of knowing this Fact ; his Mother stood *Godmother* to the Child.

Child. If you give Credit to him, this is a Fact that he could not be mistaken in; it is a Fact that was then, as he says, uncontroverted. There is another Witness, whose Credit is not objected to, to the same Point; Alderman *Barnes* tells you, that he was then told by 500 People at *Ross*, that my Lady *Altham* was brought to-bed of a Son. After this Evidence, surely there can remain no doubt that there was then a Reputation, which generally prevail'd to this Purpose. If the Fact was not so, how could such a Report take Place, if there was no Foundation, if she was never with Child, as has been asserted by the Witnesses on the other Side, 'tis impossible a Report of this Sort could have even arisen, much less have prevailed universally. But though this, in my Apprehension, would be sufficient in itself to confirm the positive Testimony on our Side, which is in Number, and Credit of the Witnesses, greatly superior to that on the Side of the *Defendant*; it is still further confirm'd by many Circumstances of great Weight. Alderman *Barnes* was told at *Ross*, by my Lord himself, that his Wife was brought to bed of a Son; is it to be believed that my Lord could make a Declaration of this Sort, if there was no Foundation? Could he spread such a groundless Report in the very Country where he lived? Is it possible that he should then have form'd a Scheme of imposing a Child upon this noble Family? Is it pretended by the Witnesses for the *Defendant*, that there was a Child in the Family at that Time, that could have given any Pretence to my Lord for such an Imposture? The Child of *Joan Landy* was then known to be a *Bastard*, and therefore whatever Scheme he might after have formed, it is impossible he could have any Design of this Sort at this Time. This Testimony of Alderman *Barnes*, is further confirm'd by the Testimony of my Lord *Mount Alexander*; and I think his Testimony singly would be sufficient, tho' not to prove this Child the Child of my Lord *Altham*, yet to shew that my Lord *Altham* had one Time a Child, he mentions my Lord *Altham's* coming into his Company, and the Words he said to Captain *Crow*, that his Wife had got a Son. This is a Fact that my Lord *Mount Alexander* is positive of; it is

is very true he fixes no certainty of Time, 'tis impossible to ascertain the time of Facts at such a Distance, but the Nature of the Thing speaks it, that this Declaration must have been soon after the Birth of the Child. It cannot be supposed that my Lord *Altham* should tell this as a Piece of News, two or three Years after it was publickly known. This Evidence puts it beyond Controversy, that Lady *Altham* had one Time a Child, which is sufficient for us to prove; and it lies upon the other Side to shew what became of that Son. If you will consider the positive Evidence that has been given by Mr. *Pigot*, by Mr. *Barnes*, by Lord *Mount Alexander*, there can surely remain no sort of doubt, but there was one time a Child in this Family; they all swear to Facts that must be within their Knowledge, and unless Gentlemen could frame an Opinion, that these Gentlemen could be corrupted, they must believe that there one Time was a Son born in this Family, which is sufficient to take away all Credit from the positive Witnesses on the other Side. The Testimony on the other Side produced to confirm their Evidence, supposing the Persons were of equal Credit, could not have equal Weight; they swear positively to no Fact, all the Account they give is a Negative one, and the most favourable Construction that could be made on their part is, that they are ignorant of a Fact, that has been known by all the rest of the Country. Thus, if the Evidence had gone no further, I apprehend it must have been sufficient to prove beyond Dispute the Birth of this Child; but that no part of the Chain might be broken, we have gone further, and shewn you his Reception and Education from the Beginning; we have shewn my Lord's and Lady's Fondness for him; *Joan Laffan's* Testimony is full to this Point. You will consider, Gentlemen, the Consistency of this Woman's Evidence, three Times upon the Table, and thoroughly sifted, nay examined to Circumstances that she could have no Expectation to be examined to, and her Testimony confirm'd by the Evidence produced by the *Defendant*. You will observe further, that it has been labour'd in this Case, on the part of the *Defendant*, if possible to destroy the Character of this Woman; for this Purpose they have

examined Colonel Palliser, Tom Palliser, Aaron Lambert, and William Elmes; but the Character they have given is general; as for Aaron Lambert and Elmes, I would ask if there be not as much Occasion to produce Witnesses to their Credit, as there is to hers. The Prime Serjeant has imagin'd, that there is one Inconsistency in her Testimony, but I will beg leave to shew that it exactly corresponds, in the part he mentioned; she says, in *Harvest*, after the Death of the Queen, she went to live with Lady Altham, which was the *Harvest* 1715; that she lived about a Year in this Family before the Time that the Child was put into her Care, which brings it to *Harvest* 1716; she says, that the Child, at that time, was a Year and four Months old, which was exactly it's Age, and answers exactly to the other parts of her Testimony; she says, she took Care of the Child for about six Months before the Separation of my Lord and Lady, which happened in *February*; and if you compute from *August* to *February*, you will find the time nearly answer to her Calculation. This Testimony of hers is further confirmed by that of *Donnick Farrel*; he swears that he went sometime before the parting, to visit my Lord at *Dunmaine*, and saw the Child in the House at that Time. The Gentlemen on the other Side have made some Objections to this Person's Testimony, on Account of a Mistake in Point of Time; I must admit that he said he went to *Dunmaine* in the Year 1717 or 1718, but he is positive that it was before the Parting, and as he told you, that from the Year 1714 to 1721, he went over every Year from this Kingdom to *England*, and the only Mark by which he fix'd the Time of this Journey was, that it was before some of his Journeys to *England*. This may well be supposed to have led him into that Mistake; in other Parts of his Testimony he is consistent, and when he is positive to the Fact, that this was before the Parting, I should hope that a Mistake of this Nature will not, at this Distance of Time, be sufficient to destroy his Testimony. But this Fact does not stand upon the Credit of these two Witnesses only, but of all the Witnesses, and of all the Circumstances I have already

mentioned, which prove the Birth of a Child in this Family. If there was a Child, if the Jury give Credit to the Witnesses who have proved its Birth, every one of them must go in Confirmation of the Testimony given by these two People; the Fondness they mention will then be easily believed, their Evidence, and that I have before mentioned as to the Birth, mutually support and corroborate each other. Your Lordship will observe in what Manner the *Defendant* has thought proper to answer this Part of our Testimony. The Defence he has made is double, one Part of the Evidence denies that any Child was entertain'd at *Dunmaine*, the other attempts to prove, that the Child there received was a *Bastard*; it is said that immediately after the going away of my Lady, my Lord thought proper to take home a *bastard* Child of *Joan Landy's*. *William Elmes* is produced to prove this, he says he saw it in the House, that it was about three or four Years old, and takes upon himself to swear, that this was the very *bastard* Child by *Joan Landy*. How is it possible to believe that a *bastard* Child, neglected as this is represented to have been, should be so visited by him, as to give him an Opportunity to swear to its Identity? The other Witnesses produced to this Point, are *Martin Nief* and *William Bowles*; they are positive as to this Fact, and swear that the Child was then between four and five Years old (very near two Years Variance as to the Age) and so little Care was taken of him, according to their Account, that he was given into the Care of *Black Kate*. These two Witnesses are inconsistent with *Elmes's* Account in several Particulars. *William Bowles* says, that my Lord shewed him this Child, and told him it was *Joan Landy's*, and that he told him that the Child should not see his Mother. There is one Mrs. *Ann Caulfield* produced, who indeed never saw this Child; but she says, that my Lord, after the Separation, applied to her to take this Child into her House to Dry-nurse it, but this is contradicted by all the other Witnesses. There is another material Witness, *Patrick Furlong*, who was the Schoolmaster and the Fowler. I shall not take up your Time at this Hour of the

the Night, to observe particularly on Witnesses of this Sort. I am sure, when the Gentlemen of the Jury look into their Notes, they must find such Contradictions, such Absurdities in their Testimony, as must entirely destroy its Credit. By *Anthony Dyer* we are told, that the Child was never in the House after my Lady went away; that before the Time of my Lord's coming to *Parliament*, he's positive there never was a Child in the House; I should be glad the Gentlemen on the other Side would be pleased to reconcile this Evidence. Was there a Child or not? Part of the Witnesses swearing one way, and Part another, must raise a Suspicion in every Mind, that the Child's being in the House was a known Fact, and that this Evidence has been prepared to avoid the Force of this Circumstance. If there be Reason in this Cause to suspect the cooking up of a Story, can there be Grounds for such a Suspicion in any Part of the Cause more than in this? But, in order more clearly to shew the Falsehood of this Pretence, we have produced Witnesses to shew, that this same Child of *Joan Landy's* was actually dead and buried, this is proved positively by *Dennis Redmonds* and *Philip Breen*. I believe the Objection won't be made, that they are not proper Witnesses on such an Occasion. We have gone on yet further in our Evidence, to shew the Treatment and Reputation of this Child during the whole Time he lived with my Lord; and though they have controverted this Point at *Dunmaine*, yet, when the Child grows older, it is a Fact that almost remains uncontroverted. It is admitted by the Evidence on their own Side, that he was entertained both at *Kinnea* and *Carrickduffe*, and at least treated as the *legitimate* Son of my Lord *Altham*. As to *Kinnea*, the first Witness we produced was Mr. *Misset*, a Gentleman of Credit, who swears to a Declaration of Lord *Altham's* to this Point. Can it be supposed that Lord *Altham* could have form'd so absurd a Scheme as to impose a Supposititious Child upon this noble Family? And yet, if you give Credit to Mr. *Misset*, you must, if the Child was not *legitimate*, believe my Lord had founded such a Scheme. Mrs. *Annesley* swears, that it

was generally reputed in the Country, that this Child was the *legitimate* Son of my Lord *Altham*. She mentions some Circumstances of Compliments paid to my Lord by drinking the Child's Health. Gentlemen, well consider, that she was a Relation, and conversed constantly with my Lord, and his Family. She says, she never heard the *Legitimacy* of the Child called in Question till of late. If my Lord had form'd a Scheme of this Nature, would not the Absurdity of such a Proceeding have naturally produced some Conversation? Some Doubt in the Country, especially at Mrs. *Annesley's*, whose Husband, from his Relationship, was nearly concerned in the Honour of this Family? Is it possible she never should have heard the *Legitimacy* of this Child doubted? This Part of the Evidence is no way contradicted, but by Mr. *Medlicott*; and his Testimony stands so strongly contradicted, that it must be supposed to be a Mistake. There is indeed another Part of the Evidence, which I had like to forget, which goes to this Time at *Kinnea*, which is that of *Martin Nief*, and is too extraordinary to gain Credit; he says, that the Boy was then reputed a *Bastard*, and my Lord ordered the Coachman to whip him, and swears to an Expression of my Lord's, *that the Boy would never be good, for he had too much of his Mother, Joan Landy's, Blood in him*. Gentlemen, can you give Credit to a Testimony, which so absolutely contradicts, not only the Accounts on our Side of the Reception and Treatment of this Boy by my Lord at this Time, but even all the Admissions of the *Defendant*? The next Point of Time is at *Carrickduffe*, and the Evidence as to that, in my Apprehension, is at least as full and strong as the other. Messieurs *James* and *Charles Cavanagh*, and Mr. *Charles Byrne*, have been examined to this Period of Time; I'm sure their Evidence is too material to have slipped the Minds of your Lordship, and the Jury; they prove to a Demonstration that, during this Period of Time likewise, this Child was known and treated as the *legitimate* Son of Lord *Altham*. If you will therefore add this Evidence to that I have formerly mentioned, they must surely remove all Doubt from the Minds

Minds of the Jury. 'Tis hardly possible to suspect the Legitimacy of a Child, who, during so long a Period of Time, was reputed and acknowledged as such by the whole Country, without the least Suspicion or Doubt of his Birth. The Reception of him all this Time by my Lord, his frequent Declarations of the great Expectancy of this Child must put the Matter without Doubt. When my Lord returned to Town; this Child was at first neglected, and at last totally abandoned by my Lord; 'tis hard to assign the Reason of so extraordinary and unnatural a Behaviour; but from the whole Evidence relating to this Part of the Case, I think, it clearly appears to have arisen from the Influence of Miss Gregory. Patrick Plunket says the Boy was often complained of by her, and on her Complaints corrected by my Lord. Arthur Herd, who shews no great Inclination in Favour of the Plaintiff, takes Notice of a visible Alteration about this Time in the Care of this Child; the Boy was then of an Age that could not suffer him to do any Act that might justify such a Behaviour in a Father; it can only be accounted for by the Influence of Miss Gregory, who possibly, from some View of Interest, if there is any Foundation for what has been surmised of a Marriage intended by her with my Lord, might have looked on this Child with a more jealous Eye, on Account of his being legitimate. Arthur Herd at last, when hard pressed, tells you, that my Lord would do any Thing Miss Gregory would have him; the unhappy Occasion of the Separation between my Lord and Lady so quickly after the Birth of the Plaintiff, gave too natural an Occasion to her to suggest Things to his Disadvantage; and from all the Witnesses, even those on the Part of the Defendant, there is little Reason to suppose she would neglect such an Occasion. But be that as it will, there may be some Actions so absurd, that it may be impossible to account for them. The Misery, to which the Plaintiff was abandoned, has been clearly shewn, but surely the Presumption arising in his Favour, from the Fatherly tender Treatment of my Lord towards him in his Infancy cannot be lessened by this sudden, unnatural Change, however unaccountable. It has been objected, that there has not

been any Evidence produced to shew an Acknowledgment of this Child by my Lady ; as to this, Gentlemen, you observe that *Joan Laffan*, *Dennis Redmonds*, and *Dominick Farrel*, agree in their Accounts of her Fondness and Tenderneſs towards it during her Cohabitation with my Lord. *Joan Laffan* tells you, that from the Time of this unhappy Separation ſhe was abſolutely forbid by my Lord to ſuffer her even to ſee the Child, notwithstanding which ſhe contrived once, I think, to have it carried to her Lodging at *Rofs*. The only material Witneſs on the other Side, to this Point, is *Alderman King* ; but he ſays no more than that he does not remember to have heard her mention this Child. 'Tis poſſible ſuch a Converſation might, at this Diſtance of Time, have eſcaped his Memory, or that my Lady might never have Occaſion to ſpeak to him on that Subject. As to *Elizabeth M^cMullen*, ſhe, in her Teſtimony, ſwears poſitively to one Fact, which is ſo incredible, ſo abſurd in itſelf, that it muſt take away all Credit from her. She ſwears that ſhe went to the Funeral of my Lord *Altham*, ſaw this Child crying there, inquired what ailed him, and that he told her his Tears were for his Father, and that he was my Lord's Son by *Joan Landy*. Now is this poſſible to be conceived ? This Child, it appears, in all his Diſtreſſes, always inſiſted upon his *Legitimacy* ; it appears, that the Declarations of this Child at the Funeral gave great Uneaſineſs to the preſent Lord *Angleſey* ; is it poſſible to ſuppoſe, that he ſhould at once declare himſelf to be the Son of *Joan Landy* ? There is but one Witneſs more to this Point, and that is *Mrs. Heath* : She indeed, if ſhe was inclined, could give a full Account of this Matter, but her Teſtimony to this Point can only have Weight in Proportion to the Credit you give to the other Parts of her Evidence ; if upon Conſideration of the whole you ſhall be of Opinion, that ſhe has falſified in any one Fact, within her Knowledge, that will not only take away all Credit from her in this Part ; but will likewise ſufficiently excuſe any Defect in our Evidence as to this Particular. My Lady went to *England* before the Child was abandoned by its Father, from this Time ſhe liv'd retired from the World, and her Sentiments
and

and Behaviour known only to Mrs. Heath. Whatever Tenderness she might have expressed for this Child at this Time, we have little Reason to expect an Account of it from the Mouth of such a Witness. Thus, Gentlemen, upon Consideration of all the Circumstances of this Case, of all the positive Evidence that has been given, compared and weighed together, there will not, I hope, remain the least Colour or Foundation to dispute or doubt the *Legitimacy* of the *Plaintiff*. But in Addition to this, if you will take the Behaviour of the Parties into your Consideration, you will see the *Plaintiff* on one Hand, even at the lowest Ebb, still insisting upon his *Legitimacy*. Mr. *Bush* says, that he always insisted he was the *Legitimate* Son of my Lord *Altham*; this is confirmed by Mr. *Tighe*, Mr. *Purcell*, and Mr. *Ash*, who have been Examined as to this Point, and declare, that he claim'd his Birth-right even at the Grave of his Father: Can you suppose that this Child, who has been sworn to have been taken Care of by *Joan Landy*, as his Mother, to have been publicly declared a *Bastard* by my Lord, could have persisted, if this Evidence had been true, in a Falshood so notorious? You must suppose, if this Account is to be credited, that he must have known himself to be a *Bastard*; and is it to be believed, that he, at the Age of nine or ten Years old, could form a Design of imposing himself as *Legitimate*? No, it is a Thing not to be believed. But if you consider the Evidence as to the *Defendant's* Behaviour, it will still give greater Weight to this Observation; it will leave no room to Doubt the Truth of it. The Evidence as to the Part my Lord had in the Transportation of the *Plaintiff*, is positive and strong; it has, indeed, been Objected, as if the Testimony of *Reily*, was inconsistent with that of the other Witnesses to this Point; he swears he was sent for to the *Quay* by my Lord, that he did not see the Child there, that he was sent from thence to borrow a *Guinea*, that he was an Hour and a Quarter before he returned, and that he never saw the Child at the House of *Jones*, nor until he returned to the *Quay*; the other Witnesses swear positively that my Lord was at *Jones's*: But is not this easily reconciled, if you suppose

that my Lord went first to the Quay to fix a Boat, and such other Things as were necessary for this wicked Purpose; that after this he went to the House of *Yates*, and returned back to the Quay before *Rilly*; *Rilly* swears, that immediately after his Return, my Lord gave the Guinea to the *Bailiff*, and the Child was brought: Why is it not easy to conceive, that in that Time the Child was brought to the Quay, and there kept ready to be delivered on my Lord's performing his part of the Agreement. As to the Entries in the Books of the *Tholsell*, where the Names are different, that is impossible to have happened by Mistake; the Note left with the *Town Clerk*, must be taken from the Note of the Names entered in the Merchant's Book, and therefore could not be mistaken there, as we find it rightly entered in the Book of the Merchant; this Circumstance of the Book, is so far from taking from the Credit of our Evidence to this Fact, that it adds Weight to it; but what Weight must it have when you come to consider the Testimony of Mr. *Ash*? He tells you, that immediately after the Death of Lord *Altham*, the present Lord was told of this Child's claiming the Honour and Estate, and that Mr. *Hawkins* made a Difficulty of Enrolling his Peerage. What does my Lord reply to this? That the Boy must be Transported. He must have had Reason for this Resolution, from the Conviction of his own Conscience. The Circumstances of the Time, his whole Behaviour shews it. Why else should he desire to get rid of such a Competitor in this Manner? And therefore, if you add this Evidence to the rest, tho' the Birth of the Plaintiff and his Identity were sufficiently proved before, yet, the Consciousness of the Defendant, must add such Weight as to leave no Manner of Doubt. I shall only detain you one Word more, and that is with regard to Mr. *Giffard*. You observe, that after an Absence of many Years, the Fury of my Lord was no way abated. Wherefore should my Lord employ a Person in this Prosecution, where he was no way interested? I shall submit it to the Jury, whether my Lord, for the sake of Justice only, expended so large a Sum of Money; surely the whole of his Behaviour, considered

together, amounts to a Confession of the *Plaintiff's* Title: It has been said, that if any Doubt remains, the Presumption in this Case must go in Favour of the Person in Possession; I beg Leave to say No. If the *Plaintiff* had had an Opportunity of controverting this Point immediately after the Death of his Father, of bringing his Cause to Trial then, there would have been no Doubt, Persons were then living who could have clear'd up the Matter, so as to have left no Difficulty. If their Testimony has been lost by this Delay, the ill Consequence should surely fall on him by whose Wickedness this Loss has been occasioned.

Mr. WALSH's Speech.

Gentlemen,

WHEN you consider the many Disadvantages and Misfortunes the *Plaintiff* has labour'd under; his long Absence from this Kingdom; and the Distance of time from his Birth, you can't expect, that he should give you that full and satisfactory Account thereof, and if the early Scenes of his Life, as he otherwise might have done, had his *Legitimacy* been recently contested. And that these his Misfortunes, as they have on the one hand disarm'd him of many Witnesses, they have on the other hand arm'd his Adversary with a Defence, and have given him Time and Opportunity to guard against the *Plaintiff's* Claim.

Besides, I must observe, that the *Defendant* appears to be Administrator to the late Lord *Altham*; by which means he has got into his Power all Lord *Altham's* Papers; which in all probability might have furnished the *Plaintiff* with such Proof as of itself might have clear'd up the Fact now in question.

But, Gentlemen, notwithstanding these Difficulties and Inconveniencies, the Proof which the *Plaintiff* has laid before you, I apprehend, has sufficiently clear'd up that Cloud of Infamy the *Defendant* has endeavour'd to throw over him, and has made it evident that he is the Person he asserts himself to be.

It would be tedious and unnecessary, after the Gentlemen who have spoken so fully before me, to enter particularly into the long Scene of Evidence that has appear'd on this Trial: But as the Account of the *Plaintiff's* Birth, and of the Character he appear'd in in the several Stages of his Life, has been attended with a Contrariety of Proof; I shall beg leave to make some short Observations on the Evidence attending him in each Situation, from his Birth to his Transportation; and I shall then consider the several degrees of Evidence that appear in this Case, and weigh the Probability on both Sides.

The only Point in Issue, and to which we applied our Proof, was to shew, that the *Plaintiff* is the legitimate Son of Lord and Lady *Altham*; but the *Defendant* has made two Points, to which he has apply'd Proof; the one, that Lady *Altham* never was with Child or miscarried in *Ireland*; and the other that the *Plaintiff* is the Son of *Joan Landy*.

As to Lady *Altham's* having ever been with Child or not, Mrs. *Heath* is the only positive Witness, who swears she never was with Child, or miscarried in this Kingdom, and if she stands disproved in this Particular, her whole Testimony must fall to the Ground.

As to Lady *Altham's* having miscarried at *Dunmaine*, when you weigh Mrs. *Cole's* Testimony, confirmed by Circumstances arising from the Proof given by the *Defendant's* Witnesses against that of Mrs. *Heath*; there can be but little Doubt of the Truth of that Fact. Mrs. *Cole* swears positively, that Lady *Altham* miscarried, when she was at *Dunmaine*, and tells you the Circumstances, and the Accident of breaking the *Sawcers*, which she apprehended to be the Occasion of her Miscarriage. Mrs. *Heath* admits, that the *Sawcers* were broke by Lord *Altham*, in the Manner described by Mrs. *Cole*; so that she confirms Mrs. *Cole's* Testimony as to the Cause assigned for the Miscarriage, and differs only from her as to the Effect. But Mrs. *Cole's* Testimony is not only confirmed in Circumstances by Mrs. *Heath*, but likewise by the Testimony of Mr. *Lambert*, one of the *Defendant's* Witnesses; who tells you, that Mr. *Sutton* the Surgeon was

was sent for (about the Time Mrs. Cole mentions this Miscarriage to have happen'd) to Ross, to attend Lady Altham, who was then very ill, and that her Ladyship kept her Room for a Fortnight. Tho' Mrs. Heath swears positively, that Lady Altham was never once sick, or confined even one Day; while she lived with her; so that Mr. Lambert not only confirms the Testimony of Mrs. Cole, but directly contradicts that of Mrs. Heath, in Regard to Lady Altham's being never sick or confined; and therefore, as this notorious Circumstance of the Miscarriage, must have been within the absolute Knowledge of Mrs. Heath, if she has sworn false in this Particular it must overthrow her whole Testimony as to every other.

But the Fact of Lady Altham's having miscarried is in some measure proved by Mrs. Heath in another Instance. When Lady Altham was at Mrs. Vice's, she agrees with Catherine McCormack as to Mrs. Lucas the Midwife being sent for by Lord Altham. She owns she was sent for by my Lord, but she says it was to know whether Lady Altham was with Child or not, before he parted with her; and this upon a Jealousy, he that Moment conceiv'd, upon hearing some extraordinary Noise when he came into the House; this shews that Lord Altham imagined or had some suspicion that she was then with Child. But it is very improbable, if that was his only Reason for sending for Mrs. Lucas, that he should do it at so unseasonable a time of Night, when the next Morning would have as well answered the purpose.

So that as to the Fact of Lady Altham's having ever been with Child, or miscarrying or not, I apprehend, upon weighing the positive Evidence on the one Side and the other, there can be no Doubt of her having been with Child, and of her having miscarried.

Why, then, Gentlemen, you'll please to consider the circumstantial and presumptive Evidence as to this Fact of her having ever been with Child or not.

The Evidence of Lady Altham's going to Wexford about the time we have proved her big with Child, is to be considered. Mrs. Heath and Mrs. Giffard, as to this Fact, are contradicted by undoubted Testimony.

Mr. Colclough positively contradicts Mrs. Giffard, as to the Circumstance of handing Lady *Altham* into Court, and sitting by her during the time of the Trial; that Circumstance (had it happened) Mr. Colclough could not have forgot. But I must observe, that tho' Mr. Colclough liv'd a great part of his Life at *Tyntern* near *Dunmaine*, yet the Defendant's Council did not think proper to cross examine him as to Lord *Altham*'s having had a Son, or not, or as to the Reputation of the Country as to that Fact.

But the Testimony of Mr. Higginson puts this Fact out of all Dispute: He did not want an *Eclipse* or the Trial of the Pretender's men to fix an *Æra* for his Memory; to point out a particular time for his being at *Dunmaine*; but he produced a written Evidence, I mean his Account-book, which could not be contrived for that particular purpose; and therefore more to be depended on than those studied Periods made use of by the Defendant's Witnesses, to ascertain the Time of Lady *Altham*'s going to *Wexford-Affizes*.

Why, then, Mrs. Giffard's Evidence deserves no Credit, as she stands flatly contradicted, as to this material Fact, by Mr. Colclough, Mr. Higginson, and likewise by Mr. Turner, and therefore can have no Weight as to any other Fact she has sworn. Mrs. Lambert's Character, takes away any Credit that might be given to her Testimony. Colonel Palliser, upon his Cross-Examination, appears to have been often laid up with the Gout for a considerable Time together, and frequently absent from that Part of the Country; and Mr. Thomas Palliser's Testimony can have no great Weight, as he lay under so strong a Suspicion of having had a criminal Conversation with Lady *Altham*; and Mr. Napper's Account appears to be grounded on a pretended Familiarity with a Family with whom he admits *Arthur* then Earl of *Anglesey* had forbid him to converse.

Then, as to the Evidence that has been produced to shew the Plaintiff to be the Son of *Joan Landy*, when in the House at *Dunmaine*; Furlong the Schoolmaster's Testimony is in itself ridiculous. Downs the Priest not to be

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credited, as he disagrees with the Defendant's other Witnesses in the Description of the Hair, Eyes and Dress of the Person they would have understood to be *Joan Landy's* Son; and if you believe *Ryan* his Brother Priest, he is willfully perjured, by swearing to a Fact he did not remember, and for which he intended to get Absolution.

On the other hand, Gentlemen, the Testimony of *Joan Laffan* is clear and consistent, and the Circumstance of her Conversation with the Defendant the Day after the Separation of Lord and Lady *Altham* at *Dunmaine*, is not to be forgot; when the Defendant enquir'd for the Plaintiff, and whether Lady *Altham* had taken her Son with her, and his wondering that Lord *Altham* would keep any of her Breed from her, or to that Effect. 'Tis true, that Persons have been produced to take away the Credit of her Testimony, by swearing to her Character; but I must observe that the Persons examined to her Character were those to whose Testimony she swore in direct Opposition.

As to the Reputation of the Country in this particular, Colonel *Piggott's* Testimony, who resided at *Tyntarn*, a Gentleman of undoubted Credit, no way interested in the Family, must surely have its proper Weight. He tells you of Messages from his Family, with *How do you's* to Lord and Lady *Altham* and their Son; and can it be supposed, that if he was a *Bastard* of *Joan Landy's* the Kitchen-Maid, that such a Compliment would be paid him by Mr. *Piggott's* Family.

The Variance in point of Time as to the Testimony of some of the Plaintiff's Witnesses has been much insisted on by the Council on the other Side, to take away their Credit; and I must take Notice, that the time of the Eclipse has been thrown in their way as a Stumbling-block to make them fall into those Mistakes. But, Gentlemen, when you consider the Number of Witnesses that have been produced to prove a particular Fact, you must easily be reconciled to the small Variations in their Testimony at this distance of Time. Mens Memories must, from their different Constitutions, be unequal; and therefore, where

where there are many Witnesses to a Fact, not recent, they must necessarily vary in Circumstances. But their Variations, in my Apprehension, give Weight and Strength to their Testimony, and plainly shews that they have not been instructed.

I shall now make some short Observations on the Evidence on both Sides as to the *Plaintiff* when he resided at *Kinnea* and left *Dunmaine*.

Martin Nief the Smith, in his Account of him there, gives you the true Description of a *Bastard*, his Dress an old ragged Frieze Coat, with all the other Appearances of Poverty. He tells you, that there were general Directions given by Lord *Altham* to all his Servants to whip him whenever they found him doing any thing that was faulty. He tells you, that *Joan Landy* his Mother visited him there; and when his Lordship corrected him, he always made use of this Expression, That he had too much of his Mother *Joan Landy's* Blood in him. Tho' I must observe that several of the *Defendant's* Witnesses, who have given an Account of him at *Dunmaine*, swear that Lord *Altham* would not let *Joan Landy* come near the House, lest the *Plaintiff* should see her, and that he had often declared, that he would not for five hundred Pounds that the *Plaintiff* should know his Mother to be *Joan Landy*. But, on the other hand, when you consider the Testimony of Mrs. *Annesley* and Mr. *Missett*, and the Account they give of the *Plaintiff* when at *Kinnea*, *Martin's* Testimony can receive no Credit. Can any Man believe that a Person thus meanly dress'd, thus treated, as *Martin Nief* tells us the *Plaintiff* was, could be constantly toasted in a Family of Credit and Distinction, as Mrs. *Annesley's*, to Lord *Altham* as his Son. Can any Man believe that the Person, who, by Mr. *Missett's* Testimony, was in all Probability to be one Day Lord *Anglesey*, should be so little regarded by his Lordship, that he should give general Directions to his Servants to whip him on all Occasions; and can any one believe than the *Plaintiff*, from *Martin Nief's* Description of him, could gain a Reputation in the Country of being

being Lord *Altham's* lawful Son? Which, if you believe Mrs. *Annesley* and Mr. *Misset*, is unquestionably true.

Then, Gentlemen, you'll consider the Evidence as to the *Plaintiff*, when he was at *Carrickduff*. Mr. *Herd* the *Barber*, who would have himself understood as a Man of considerable Weight with Lord *Altham*, tells you, that the *Plaintiff* was always treated there as a *Bastard*, that he wore Lord *Altham's* old Cloaths, and was always look'd upon as his Lordship's *Bastard*, by *Joan Landy*. But notwithstanding this low Character he represents him in, he condescends so far as to allow he was employ'd to look after him, and that he had likewise a private Tutor.

But can his Evidence weigh against the Testimony of the two Mr. *Cavanagh's* and Mr. *Byrn*, who tell you that he was treated there as Lord *Altham's* lawful Son, cloath'd as a *Nobleman's* Son, introduc'd as such to all the Gentlemen of the Country that visited his Lordship; and can it be presum'd that Lord *Altham* would have done this, had he not been his *legitimate* Son?

In *Frapper-Lane*, Mr. *Byrn* tells you, he was treated with the same Respect, and was always reputed the *legitimate* Son of Lord *Altham*. So that from the time of his Birth to this Stage of his Life, when you consider and weigh the Probability that arises from the Evidence on both Sides, the *Plaintiff* thus far appears to be the *legitimate* Son of Lord *Altham*.

I shall now beg leave to make some short Observations on the Evidence relating to Lord and Lady *Altham's* Declarations as to their having or not having a Son.

Mr. *Becket* gives a most uncertain Account. What he says as to the several Places Lord *Altham* lived in when he was acquainted with his Lordship, is contradicted by all the rest of the *Defendant's* Witnesses. For by his Account Lord *Altham* never lived at any place but Mrs. *Vice's* and *Inchicore*. Colonel *Harman's* Conversation with Lord *Altham* about his not having a Son, for any thing that appears, might have been before the *Plaintiff* was born; for he is uncertain both as to Time and Place; Mr. *Medlicot* tells you of a Declaration of Lord *Altham's* that hap-

happened 20 Years ago, when he was a Boy, but recollects no Particulars of the Conversation that happen'd, or how it was introduced.

But, Lord *Mount Alexander* tells you, that Lord *Altham*, in his Company, declared he had a Son by his Lady, with a particular Circumstance in the Relation, that the News would make his Brother's Nose swell. Mrs. *Hodgers* tells you, that Lady *Altham*, in a Conversation she had with her, told her, that she had a Son; and tho' she was not Lady *Altham*'s Companion or Acquaintance, it was natural for Lady *Altham* to fall into that Conversation with her, that she mentions, as she was her Countrywoman: And when she related her Misfortunes to her, it was almost a consequential Question to ask her whether she had a Son? Besides, all the other part of her Testimony is confirm'd by Mrs. *Heath*. Alderman *Barnes* tells you of Lord *Altham*'s telling him he had a Son by *Moll Sheffield*, at *Ross*, when Lady *Altham* was but just brought to Bed. *Edw. Lutwich* tells you he saw the Child with Lady *Altham* at *Ross*, after the Separation, and what she said upon her being deprived of her having him with her. These Relations, attended with Certainty of Time and Place, must surely outweigh the uncertain Evidence that has been given on the other Side. But I must observe to you, that when these Declarations were made by Lord *Altham* to Lord *Mount Alexander* and Alderman *Barnes*, Lord and Lady *Altham* liv'd together; and therefore, can it be imagin'd, that Lord *Altham* would set up a *bastard* Son as a *legitimate* one, when he had a Possibility, nay a Probability of having a *legitimate* Son to inherit so great an Estate. So that as to the Proof in relation to the Declarations of Lord and Lady *Altham*, of their having or not having a Son, the Weight is entirely with the *Plaintiff*.

Why, then, what is now to be accounted for, is, Lord *Altham*'s Behaviour to the *Plaintiff* as his *lawful* Son, and afterwards turning him out of Doors, as a *natural* one. And here Lord *Altham*'s Character and Circumstances are to be considered.

It appears, that at this Time Lord *Altham* lived with Miss *Gregory*; that he was greatly under her Influence; that she was address'd by the Title of Lady *Altham* in his Lordship's Family, and had form'd a Prospect to herself of being in a short time really so, from the bad State of Health the real Lady *Altham* was then in; that there was a perpetual Discord between her and the *Plaintiff*. The *Plaintiff* at that time, consider'd by Lord *Altham* as a Son by a Woman he despis'd, by a Woman that had lost his Affection, whom common Report and his own Suspicions had charged with Infidelity to his Bed; was it not then possible, nay highly probable, that he might be prejudiced so far as to think that the *Plaintiff*, tho' born in Wedlock, yet might be Spurious; these Causes, added to a bad Mind, might work him into an Indifference, and from thence into a total Neglect of this Child.

But there is a further Reason for this Presumption, which is, that Lord *Altham* was at that time in such necessitous Circumstances, that he was endeavouring to raise Money on the Sale of the Reversion of the Estate; he was but Tenant for Life, and no Trustees to preserve the contingent Remainder; and his appearing to have no Issue, at that time, was of Use, in regard a *Fine* would have bound his Issue if not born, and therefore he might have endeavoured to have made the World believe he had not a Son, and the rather, as he had a Brother ready to join in any Act for confirming such Sale.

But, Gentlemen, supposing there was a Doubt, upon the Evidence that has been laid before you of the Legitimacy of the *Plaintiff*, the Proof that has been given you of the *Defendant's* Behaviour as to the *Plaintiff*, must weigh down the Scale, and be in itself sufficient Evidence, that the *Plaintiff* is the legitimate Son of Lord *Altham*. No Person living can know better than the *Defendant*, whether the *Plaintiff* be the legitimate Son of Lord *Altham* or not. It appears by the Evidence on both Sides, that he was frequently at *Dunmaine*, whilst Lord and Lady *Altham* lived there. It appears to you, Gentlemen, that when the *Defendant* went to *Dunmaine*, immediately after the Separation of Lord and Lady *Altham*, he enquired if the
Child

Child had gone with her Ladyship; and that he was angry with his Brother for not letting Lady *Altham* take her Son with her. So that here is Proof, out of the *Defendant's* own Mouth, that he looked upon him, nay knew him to be Lord *Altham's* legitimate Son.

When the *Plaintiff* was turn'd out of Doors by his Father, and abandoned and taken in out of Charity by *Purcell*, the different Behaviour shewn to him by the *Defendant* before and after the Death of Lord *Altham*, is very remarkable, and shews plainly his Consciousness that he was Lord *Altham's* lawful Son.

When he went to visit the *Plaintiff* at *Purcell's*, when he was in the Small-pox, he appeared as a kind and tender Uncle, acknowledged him to be his Nephew with all the Tokens of Affection, and to recommend him the more to *Purcell*, told him that the *Plaintiff* was the lawful Son of Lord *Altham*. But I fear his Visit at this Juncture did not so much proceed from his good Nature and Affection, as to know what Probability there was of that fatal Distemper carrying him off. For how was the Scene changed in a few Weeks after Lord *Altham* died? The *Defendant* then sends for the *Plaintiff* to Mr. *Jones's*, and the first Salute was, to bid the *Constable* he had with him for that purpose to seize the thieving Rogue. But *Purcell* interferes, and rescues the *Plaintiff* from their Hands. Then what was the *Defendant's* next Step: He employs Persons to lay wait for him, and at last succeeds in his Design; and to give Colour to the abominable Act he was going to commit, of transporting him; he charges him with Felony, and tells the *Ruffians* who seiz'd him, that he had stoln a Silver Spoon. Had the *Plaintiff* done him any Injury at this Time? Had he commenc'd any Suit against him for the Recovery of the Title or Estate? Was he supported by any Person of Rank or Fortune? Could the Son of *Joan Landy* a Kitchen-maid, a Person treated always like a *Bastard*, reputed as such wherever he went, be of such Consequence as to shake him in his Title? From whence then should the *Defendant's* Fears arise; and where was the Necessity of the *Defendant's* using these extraordinary Means to get rid of him? Must it not arise from a Self-conviction, from a Self

a Self-knowledge that the *Plaintiff* was the *legitimate* Son of his Brother ; from a Consciouness that he would some time or other assert his Right, and that therefore he thought it prudent to catch at the Opportunity, when the *Plaintiff* had neither Friends nor Fortune to support him, to transport him into a foreign Kingdom, where in all probability he might not be further heard of? When he received the Alarm of the *Plaintiff's* being in Admiral *Vernon's* Fleet in the *West-Indies* ; and being then attacked by *Charles Annesley*, by his Lady, and by Lord *Haversham*, on account of their Demands against the Estate, Conscience or Interest then works a Reformation in his Mind ; he applies to Mr. *Giffard* his Attorney, reveals the Secret that the *Plaintiff* is the rightful *Heir* to the Estate, and that he would make Terms with him, that he would go live in France, and disappoint Mr. *Annesley* and the other Persons who were suing him ; and he carries this Design in some measure into Execution, by employing a *French* Master to teach him the Language of that Nation. But when he received the agreeable News of the *Plaintiff's* Misfortune of killing a Man at *Stains*, he soon changes his Mind. He then applies to *Giffard*, and declares that it should cost him ten thousand Pounds, but he would hang him ; and to apply the Expression of the Husbandman in the Parable, who had taken Possession of the Vineyard, *This is the Heir, come let us kill him, that the Inheritance may be ours.* All Engines were set at work for this Purpose, and eight hundred Pounds expended in the Prosecution of this unfortunate young Man. But Providence has delivered him out of the Hand of his Enemy, and given him an Opportunity of asserting his Right before a *Jury* of known Honour, Understanding and Integrity, against the Person who would not only have deprived him of his *Birth-right*, but of his *Life*.

There is one Thing more which I forgot to mention, which is in Relation to what has been urged of Lady *Altham's* not having asserted the Right of the *Plaintiff* after the Death of Lord *Altham*,

It appears to you, Gentlemen, that Lady *Altham* was afflicted, for many Years before her Death, with a *dead Palsy*,

Palsy, which, from the Nature of that Disorder, must have affected her Understanding; that she was low and indigent in her Circumstances; maintained by Charity; the Duke her Father dead; she in another *Kingdom*, and from the Misfortune she lay under of being charged by her Husband with Infidelity to his Bed, probably Friendless; and therefore might have been discouraged in the Pursuit.

You will likewise, Gentlemen, consider, that the *Plaintiff* was transported in about four Months after his Father's Death, and, for any thing that appears to the contrary, she might have made all imaginable Enquiries for him, and might have found them all fruitless. Therefore, upon the whole, I hope you will have no Doubt but that the *Plaintiff* is the real *legitimate* Son of Lord *Altham*, and will find for him.

It being late in the Evening before the Council had done speaking, the Court deferred giving their Charge to the Jury until next Day, and adjourned to *Friday* at Twelve o'Clock.

Friday, November 25.

The Court having met according to Adjournment, and the Jury having appeared as usual, the Lord Chief Baron summed up the Evidence in the following Charge.

LORD CHIEF BARON'S Charge.

Gentlemen of the Jury,

WE are now come to the last Period of this very important *Trial*, and after having attended to a longer Evidence than ever was known upon a Trial at Law, You Gentlemen, by your Verdict, must determine a Question of as great Consequence both as to Property and Title, as ever came before a Jury.

I did

I did apprehend when this Trial began, that it would run out to a great Length, and therefore apprized you of what I thought must be the Consequence, that the Court would not be able minutely to sum up the Evidence upon this, as upon like Occasions; and therefore recommended it to you to make and enter your own Observation, as the Evidence should be laid before you: But when I consider your Exemplary Behaviour during the Course of this long Trial, the Attention you have given, and the Desire you have expressed to do Justice, I think it incumbent upon the Court as far as they can, to be aiding and assisting to you, in this your Search after Truth. To this End, I shall, though very briefly and imperfectly, lay before you, what hath occurred to me; which I shall do in this Method. I shall endeavour by way of Narrative, to collect the Facts that have been sworn to on both Sides; I shall next mention the Objections, as far as I have taken them, that have been made to the credit of the respective Witnesses, together with some Observations that may assist you in judging how far those Objections ought to weigh with you. And as it will appear in the course of this Evidence, that there have been Inconsistencies, and, in the most material Facts direct Contradictions; I shall therefore take Notice of those Circumstances attending this case which may throw a Probability or Improbability upon the Testimony you have heard.

The Action to be tried is, an *Ejectment* brought for Lands in the County of *Meath*; and by the Admission of the Council for the *Defendant*, the *Plaintiff's* Title is brought to a single Question, Whether the *Lessor* Mr. *James Annesley* be the legitimate Issue of *Arthur* late Lord *Altham*; it is admitted on both Sides, that the *Plaintiff* and *Defendant*, claim the Lands in Question under the Will of *James* Earl of *Anglesey*, and that by such Will, the Limitation to the Heirs male of the Body of *Arthur* late Lord *Altham*, is prior to the Remainder limited to the *Defendant*; and therefore if the *Plaintiff* can prove that he is the legitimate Issue of *Arthur* late Lord *Altham*, a Verdict must be found for the *Lessor* of the *Plaintiff*;
but

but if he fail, then there is an undoubted Title in the Defendant, being the Person next in Remainder under the Will of James Earl of Anglesey, and a Verdict must be found for him.

Gentlemen, The Question being a meer Matter of Fact, the Plaintiff's Council have proceeded to lay their Evidence before you in the following Manner. They have given Evidence to induce a Probability, that Mary the Wife of Arthur, late Lord Altham, might have had a Child, and that, by examining Mrs. Dorothy Briscoe, and Mrs. Henrietta Cole, alias Briscoe, to shew that there was a Reconciliation between my Lord and Lady Altham, some time in the Year 1713, that they came together and cohabited at the House of their Father in Bride-Street, from whence they went to one Mr. Vice's in Essex-Street, and from thence to Dunmaine; and there another Circumstance arises, which is, that Mrs. Cole and her Mother being invited to Dunmaine, went thither, and while they were there, upon an accident, which has been so often repeated that I shall not go into the Particulars of it, Lady Altham was frightened, and in Consequence of that Fright, miscarried; and the same Witness, Mrs. Cole, swears that she saw an Abortion. They have also produced Catharine Cormack, to shew a second Miscarriage, in the same Summer with that mentioned by Mrs. Cole; the Circumstances of that likewise have been so often repeated, that I only mention the Fact. Having done this, the Plaintiff proceeded to shew an actual Pregnancy in Mary Lady Altham: The Evidence for this was Alice Bates, the Servant of Mrs. Briscoe, who was admitted to Intimacy with Lady Altham, and to whom it was told by Lord Altham, and acknowledged by Lady Altham; and who further swears the Pregnancy was such that she did observe it, and by laying her Hand upon the Belly of Lady Altham, she took upon her to say that Lady Altham was big with Child. I don't as I go along, take Notice of the Objections to the respective Witnesses, intending to consider them together. In the next Place, they have endeavoured to prove Circumstances preparatory to the Delivery of Lady Altham. Dennis Redmond tells you that

he was sent for the *Midwife*, and *Thomas Brooks*, that he was sent for as a *Surgeon* to let her Blood at the Time of her Labour; and *Dennis Redmond* and *Philip Breen* both speak to their observing that Lady *Altham* was pregnant before this Time; and, *Gentlemen*, it did appear that these two were Servants about the House, though in a very low Station, the one I think, a Helper in the *Garden*, the other in the *Stables*.

The next Period is the actual Delivery; and for that, they have produced two positive Witnesses, the one *Mary Doyle*, a Servant in the Family; the other, *Elenor Murphy*, who calls herself Chamber-maid; both these swear they were in the Room at the Time of the Delivery; and as far as their Testimony shall avail, are positive Witnesses to the Fact. The next are the Circumstances consequent upon the Delivery, that were Evidences of it. The first is spoke of by *Breen* and one or two more, and that is, the Rejoicings that were made upon the Birth of this *Heir*. The next was the *Christning*, which is sworn to by the two Maids that I mentioned before; who also swear that *Mr. Colclough* and *Mr. Cliff* were *Godfathers*, *Mrs. Piggot*, *Godmother*, and that *Mr. Loyd* was the *Clergyman* that officiated in the christning of this Child. The next is *Christopher Brown*, who was a Servant attending upon one *Mr. Anthony Cliff*, not the *Cliff* that was the *Godfather*, but an invited Guest; and he speaks to the being there at that Time, and attending his Master at the Table, at the Entertainment that was made on the Occasion. *John Scot*, a Servant, I think, - of *Mr. Piggot's*, he speaks to subsequent Time after the Delivery, and says, that after his return with his *Master* from *England*, he was sent a dozen times, as he has sworn, to this House with Messages, and Compliments to the Lady, and to know how the Child did.

Gentlemen, it will be material for you to observe that the Birth to which this Evidence has been applied, has been fixed by the Witnesses, and admitted by the *Plaintiff's* Council, to have happened in the beginning of *summer*, 1715; which the Witnesses have also explained

to be about the Month of *May*. There were two Witnesses more, proper for me to take Notice of, but I shall not give you their Evidence by way of Testimony, because they seem to differ from all the rest; the one was that of *Charles McCarthy*, who was brought to prove the Pregnancy of Lady *Altham*, and something further; but he set out from a Period of Time so different from the other Witnesses, that the Council for the *Plaintiff* did not think proper to proceed in the Examination of him; nor have the Council for the *Defendant* made any use of him. The next I shall lay aside, is Major *Fitzgerald*, whose Evidence was to the Declaration of Lord *Altham*, the Day my Lady was in Labour, and the Invitation he had to go and tap the *groaning Drink*, and his Excuse for not going, as it was an improper Time; the Invitation he had to go the next Day, that he went, dined there, but did not lie there; that the Child was brought down to him, and that he gave the Nurse half a *Guinea*; but then he fixes this in *Harvest*, and therefore no Advantage has been taken of that Examination by the *Plaintiff*; the *Defendant* indeed has made use of it, which I shall take Notice of in the Objections.

The next Evidence, *Gentlemen*, has been to shew the Dispositions that were made relating to the Child thus brought into the World; and, indeed, I should have mentioned before the Evidence of *Matthew Furlong*, who applied for having his Wife employed as Nurse to that Child; but, *Gentlemen*, the same Evidence for the *Plaintiff* that swore to the *Christning*, the same Evidence that were about the House, and present at the Birth, have gone farther, and told you that one *Joan Landy* was appointed the Nurse for this Child, and they have all of them given this Account of *Joan Landy*, that she was a Person unmarried, that was with Child, and supposed to be so by Lord *Altham*, that was turned away, as some say, upon my Lady's coming down, as others say, before my Lady came into that Country: This Person was chose to be the Nurse, she had a Place of Residence, the *Cabbin* that was built for her Father, a Quarter of a Mile from the House of *Dunmaine*; which, as the Witnesses for the *Plaintiff*

tell you, was fitted up upon the Occasion of receiving her and this Child. *Laffan* has told you that a Room was added; others, that the *Cabbin* was white-washed and beautified, but speak not of the Room; but all agree that this Nurse had the Child there, and that for the Conveniency of visiting this Child, a Road for the Coach was made from *Dunmaine-House* to this Place. They tell you that the Child remained with her till *Joan Laffan* comes into play, as dry Nurse: And *Joan Laffan* says, she came into the Family when the Child was three or four Months old, and she has fixed her coming to *Harvest* after the *King* came to the Crown; and that it was put into her Care about three Months before the Separation of Lord and Lady *Altham*, and continued in her Care so long as it continued at *Dunmaine*; and that the Child was carried from her to *Kinnea* in the County of *Kildare*; and that it was about three or four Years old at the Time it went to *Kinnea*. They have introduced as Evidence the Declarations of Lord and Lady *Altham*, in respect to Lady *Altham*'s having a Child, and in respect to Lord *Altham*'s acknowledging that Child. The earliest in point of Time is that of Alderman *Barnes* of *Kilkenny*, who says, that it was in the beginning of the *Summer*, and by his Account not long after the Birth; he tells you the Occasion of his going to *Ross*, and that there he met with Lord *Altham*, that my Lord took him into an upper Room, and disclosed his Mind, by telling him, "Tom, I will tell you good News, I've a Son by Moll Sheffield;" that he went next Day to my Lord's House, but that he did not see the Child, nor did he hear either my Lord or Lady speak of it whilst he was there; but at last, did say, that he believed the Child's Health might be drank at the Table. The next Witness that I shall mention upon this Head, was *Edward Lutwitch*, and he speaks to the seeing of a Child at *Ross*, for whom my Lady *Altham* had bespoke two Pair of Shoes, which he was to make, and when he brought them home, he enquired for the young Lord, and they told him he was gone back to *Dunmaine*; upon which Lady *Altham* broke out into this Exclamation, it had been better for me to have been

the Wife of the poorest Tradesman in *Ross* than my Lord *Altham's*; for then I could see my Child every Day, but now I can see him but by Stealth. Gentlemen, the Witnesses for the Plaintiff that were in the House, and conversant in the Family, tell you, that my Lord did always acknowledge this Child to be his *lawful Son*, that this Child was shewn as such to the Persons that came to the House to visit, and some tell you, that they often saw the Child in and about the House.

I mentioned, Gentlemen, the Child's being removed to *Kinnea*, in the County of *Kildare*, and this was after the Separation of Lady *Altham* from my Lord. When the Child was brought to *Kinnea*, they have gone on by Evidence, to shew you, that there he was treated as the Son of my Lord by Lady *Altham*. For this, they have produced Mr. *Misset*; who tells you, that there was a Child that he took to be about six Years old, that he went to a School in the Neighbourhood, and was considered as the Child of Lord *Altham*; that it was called the young Lord; that it was sent to School with a Servant, and that he remembers it particularly by an *open Lace* upon his Hat, which he believes was the first and last that had ever been at that School. Whilst he was at *Kinnea*, as that Witness says, the Child was treated by my Lord as his Son; and Mrs. *Annesley*, a Relation of the Family, who lives in the Neighbourhood of *Kinnea*, tells you, that her Brother Col. *Geoffrey Paul*, a Gentleman well known to most Persons here, used to visit my Lord, and my Lord to visit him, and that her Brother us'd at Table to drink the Boy's Health as my Lord's Son; and says, that she was sure, from the Knowledge she had of her Brother, that if he had suspected that he was the *illegitimate Son* of Lord *Altham*, he would not have done him the Honour to have drank his Health; and that she never heard he was the *illegitimate Son*, till of late that he has been called so, on Account of this present Dispute.

The next Place the Child was carried to was *Carrickduff*, in the County of *Carlow*; and there you have had several Witnesses to prove him the *illegitimate Son*, viz. Two *Lavenaghs*, *James Dempsey* and Mr. *Charles Byrne*; who all swear to this Child's being there acknowledged as my Lord's

Lord's lawful Son, and that they had no Doubt upon them, at that Period of Time, concerning his being so; and it appears, that *Dempsie* was taken in to teach the Child, and afterwards kept School where the Child was constantly sent.

From hence, they have carried him to *Dublin*, to my Lord *Altham's* House in *Cross-Lane*; and here *Catharine O Neil*, who was the Person that brought him, gives you an Account of the Identity of the Person, and likewise of his being acknowledged as the Son of Lord *Altham*. And *Nicholas Duffe*, who kept a Publick-House, and was a *Chairman* in this Town, who was frequently with my Lord (and I think I may, once for all, observe, that this unhappy Nobleman did not distinguish his Company as became one of his Rank and Quality) tells you, that my Lord has mention'd this Boy to him, as one that would one Day be Lord *Altham*; and another time, in Discourse, told him, he would be Earl of *Anglesey*. From *Cross-Lane* (there is something mentioned of *Stevens-Green*, but I could not collect at what Period of Time he was there) the next Place he is removed to, with certainty, is *Frappier-Lane*; and there he is some time with his Father, is put to School to one *Carth*, and is known to several People in that Neighbourhood: To this you have the Evidence of the two *Byrnes* and *Matthew Plunket*, who swear that he was treated as the Son of Lord *Altham*, though the Care of him seems to lessen at that Place; for in *Cross-Lane* you hear of Miss *Gregory*, and more of her in *Frappier-Lane*; and to her they have imputed the Neglect shewn to this Son. From hence my Lord moves to *Inchicore*, about the Month of *August* 1724, at which Time the Child, then about nine Years of Age, was left by his Father. The Evidence speak of his being sent immediately to the House of one Mrs. *Cooper*. Here the Evidence begins to be less connected than before; but I shall mention it as given. *Michael Waldron* and *Dunn* say he was put to School to the said *Dunn*, who also swears to the Person, and that he was put to School by one *Cavanagh* a *Dancing-Master*; and that he afterwards saw Lord *Altham* at *Cavanagh's*, and that Lord *Altham* promised to pay him

for his Care of him. It was before this Period of Time, that *Byrne, jun.* speaks of his coming to him, and the Care he took of his School-fellow, and the destitute Condition he was then in. After this, the first Account that I think is given of him, is that of Mr. *Amyas Bushe*, who speaks of him as a Boy loitering about the *College*, who got his Subsistence by running of Errands, by the Name of a *Scull*; that moved by his Story, he was taken in by the Humanity of this young Gentleman, and that he had Intentions to do for him, if his Grandfather would have permitted him to keep the Lad. The next Account we have of him is from *Farrel*; he tells you, that he received him for a little while into his House, and that at the Request of his Father; and gives an Account how he handed him over to *Purcell*; and *Purcell* tells you the Care he and his Wife took of him, and that they both considered him as the *lawful Son* of Lord *Altham*. The Boy left *Purcell's* ungratefully, after the Treatment he met with there; and the next News of him was at the House of Mr. *Tighe*, taken in by his Son; this in Point of Time must have been soon after the Death of Lord *Altham*, which happened in *November 1727*; and in the *February* following, this Boy, about thirteen Years of Age, was missing, without any previous Quarrel, and, as the Witness soon after heard, was sent to the *West-Indies*.

Gentlemen, the *Plaintiff*, after this, thought it necessary to give some Evidence, to account how a Child that had been acknowledged by the Father as his *lawful Son*, came to be treated in this Manner; and you will observe, that one of the Witnesses, *Plunket*, says, that in *Frappier-Lane* Miss *Gregory* lived with Lord *Altham* as a Mistress, that she complained of this Boy, and that he was corrected: Indeed, he does say, that the Boy owned the Fault that he was charged with, and a Witness produced for the Defendant, *Arthur Herd*, tells you what the Offences were, and the immoderate Correction that was given to this Boy. And other Witnesses have told you, that my Lord, Miss *Gregory* and the Boy did not agree, and that

Lord

Lord *Altham* could have no Peace whilst the Boy was in the House.

Gentlemen, the next Fact that the Counsel for the Plaintiff have thought proper to apply their Evidence to, has been to shew that this Boy, at the Time he was taken from Mr. *Tighe's*, was sent out of the Kingdom by the Procurement of the now Defendant, and that by Force, about five Months after Lord's *Altham's* Death. He, as has been said, died in *November 1727*, and the Boy was taken away the *February* following. And, *Gentlemen*, as this seems to be a controverted Fact, I shall mention, the Evidence particularly. The first Account is that which *Purcell* gives, that after the Child had the Small-pox, the present Defendant came to his House, inquiring after this Boy; that he there called him the Son of Lord *Altham* his Brother; that the Boy cried, and said he was afraid of his Uncle Captain *Annesley*; and that Captain *Annesley* told *Purcell* he would speak to my Lord, and induce him to make him a handsome Consideration for his Care of the Child. Some Time after this, and after my Lord *Altham's* Death, the Boy came to *Purcell*, and told him, his Mistress had sent him, for that a Man had come to his House from his Uncle, desiring him to go to the House of one *Jones* in the *Market*; and that she desired Mr. *Purcell* to go along with him: He tells you that he went thither, and that he met this Captain *Annesley* there, and the Expressions that were made use of by him in order to take away this Boy; and he tells you that he rescued and carried home the Boy. The next Account that they give you, is by one *Marks Byrne*, a Constable at that Time, who tells you, that he was applied to by one *John Donnelly*, who told him that he had a *Jobb*, for which he was to have a *Guinea*, which was to sett this Boy, and bring him to Lord *Altham*; that accordingly they carried him to the House of this same *Jones*; that Lord *Altham* was there; that he accused him of stealing a Silver-Spoon, and ordered them to take away the thieving Son of a Whore; that accordingly they took him away, and in carrying him to *George's Quay*, as they were directed, that there was a Crowd gather'd; that the Boy

cried; that they put him in a Hackney-Coach which they met near *Essex-Bridge*, and carried him to the Place appointed on *George's Quay*; that my Lord followed on foot; and there he tells you, that he saw one *Reily* a Servant of Lord *Altham's*, and that my Lord went into the Boat with *Reily*, the Boy, and *Donnelly*; that they went off, and that he saw them go to the End of the *Wall*. The next Person produced was *Reily*, and he agrees in the material Circumstances, which were, that he saw this Boy on *George's Quay*, that he went into the Boat with my Lord and the Boy, and that my Lord and the Boy went on board the Ship, that the Boy was left behind in the Ship, and by the Time the Boat returned it was Night. *Gentlemen*, there is to be sure a Difficulty to reconcile the Testimony of this *Reily*; but I shall speak to that, when I speak to the Objections made to the Witnesses.

The next Evidence they produced on this Head was, to shew that a Ship called the *James* of *Dublin*, *Thomas Hendry* Master, sailed over the Bar of *Dublin* the 30th of *April* 1728; the Ship was entered in the *Custom-house* Book the 18th, and the Evidence afterwards shew that it sailed the 30th. *Mr. Babe*, the proper Officer, produced the Book, and there this Entry did appear, with this Addition, that the Entry was made by *Mr. Stevenson*, a Merchant in this Town. The next Step they took was, to shew from the Books of *Mr. Stevenson*, that this Boy did actually sail on board that Ship, and produced *Mr. Cromie*, at that Time Clerk to *Mr. Stevenson*, in order to shew you that this Boy did actually sail on board this Ship: He tells you, that this Ship was partly freighted by *Mr. Stevenson*, that it was bound to *Philadelphia*, that the principal Part of the Cargoe were Men and Maid Servants; he produced *Mr. Stevenson's* Book of Entries, and this Book being read as Evidence, the Title of it was, *An Account of Men and Women Servants on board the Ship James, which went over the Bar of Dublin the 30th of April 1728*. *Gentlemen*, there was a long List of Names, and among the rest, was that of *James Ansey*; and, *Gentlemen*, this *Cromie* was cross-examined as to the Manner of putting Servants on board, in order to shew you that

that it was impossible this *James Ansley* could have been put on board without his free Consent; for that the Way of Dealing was to have Servants *indented* before the *Lord Mayor*, and the Custom was to have one Part of the *Indentures* delivered to the *Servant*, the other to the *Master* of the Ship, and the Name enrolled in the *Tholsel* Books: But it appeared from his Evidence, that the List produced and kept by the Merchant, was not taken from the *Indentures*, or the Books of the *Town-Clerk*, but that the Method of taking such List was, that the Night before the Ship sailed, the Clerk of Mr. *Stevenson* went on board, and the *Master* gave him the Names of the Persons on board, and from that List this Entry was made in the Merchant's Books: So that from this Account, it was very possible for Persons to be sent away that had never *indented*. In order to shew that this Boy was really *indented*, the Counsel for the Defendant produced the original Book kept by the *Town-Clerk*, in which are entered, by the *Town-Clerk*, the Names of the Persons who *indent* for foreign Service, before my *Lord Mayor*; in which was entered the Name *James Hensley*, and insisted that it was the same Person, tho' wrong spelt; and that the Plaintiff had *indented* in the regular Way, and was carry'd off, not by Force, but according to Law. But, *Gentlemen*, I must observe to you, that the Manner of *indenting* is such, that where-ever a Person of tender Years, as this Child was, being about thirteen Years old, was to *indent*, it is always expected that the Parent, or some body that can answer for that Child, should be there consenting to that *Indenture*, or that some Account should be given concerning him. I mention this, because no Evidence has been produced by the Defendant, to shew who were present; and you will consider whether it was not in the Power of Lord *Anglesey* to have produced the *Town-Clerk* himself who made the Entry, and is now living, and whose Knowledge of the *Anglesey* Family was such, that upon his Memory he might have given some Light into this Affair, and probably could not have mis-spelt the Name of *Annesley*, with which he was well acquainted.

But, to put this Fact out of Doubt, the *Plaintiff* produced *Shelcrofs Ashe*, an *Attorney* of the *Court of Common-Pleas*, who had been employ'd by the *Defendant*, the Earl of *Anglesey*; who tells you, that upon the *Defendant's* coming to the Title of Lord *Altham*, by his Brother's Death, the Boy was mention'd to his Lordship by a Gentleman in *Ashe's* Prefence; that his Lordship complained of the Reproaches he underwent on the Boy's Account; and in particular, said, that *Hawkins*, who was *King at Arms*, had refused to enroll his Title as Lord *Altham*, upon the Clamour made by this Boy; and thereupon called him *Impostor*, *Vagabond*, and he believes, *Bastard*: That *Ashe* then told his Lordship, if the Boy were a *Vagabond*, he might be obliged to indent before my Lord Mayor at the *Tholsel*, and be transported. And *Ashe* further says, that some time after, he was again in Company with the Defendant at a Tavern, with others of the Defendant's Intimates, when my Lord *Anglesey*, then Lord *Altham*, told the Witness, he was gone, meaning the Boy; which coupled with the former Evidence, shews, as was insisted, that the Defendant intended to put the Plaintiff out of the Way; and gives Credit to the Witnesses, who for his Lordship executed such Intention, as before related.

The Plaintiff went further, to shew that the Defendant not only occasioned this Person's being taken away, but upon the Plaintiff's Return into *England*, a Misfortune befalling him, by the accidental killing a Man at *Staines*; that Opportunity was laid hold of to prosecute him, and under that Colour, to take away his Life; for which Purpose one *John Giffard* has been produced. He appears to have been an *Attorney* of the *Court of Common-Pleas* in *England*, and *Agent* for the Defendant. Some Difficulty was made whether his Evidence should be received; but the Court having admitted him to be examined, with Liberty to disclose what did not come to his Knowledge as *Agent* for the Defendant; You, *Gentlemen*, will not consider whether the divulging Conversation be what is called honourable between Man and Man, or whether the ill Treatment this Person received from the Defendant has induced

induced him to appear to give Testimony in this Cause, but whether what he has sworn be true.

This Witness speaks to the Declarations made by my Lord *Anglesey*, at the Time an Appeal was depending between him and Captain *Annesley*, before the Lords in *England*: Upon which Occasion, the Defendant said, that it was better for him to throw up his Titles, which he did not value, and to give up them and the Estate, upon Terms, to *James Annesley* the Plaintiff, whose Right they were; that he would go over to *France*, and live there, where he should be much easier and happier than he was at that Time. He tells you, that this was repeated more than once, that it was not a sudden Resolution, but the Result of deliberate Consideration, accompanied with another Act, which was that of taking a Person into his House, to teach him the *French* Tongue, to qualify him to live in that *Kingdom*. And the Witness tells you farther, that the Reason why this Project was dropt, was the accidental *Homicide* committed by the Plaintiff; upon which Lord *Anglesey* changed his Purpose, and resolved to prosecute him; and frequently declared, that he would give 10000*l*. if he could get him hanged; for then he should be easy in his Titles and Estate; and that this Prosecution cost Lord *Anglesey* eight hundred Pounds. As I shall not touch this Part of the Evidence again, I must desire you, *Gentlemen*, to consider, whether the Words sworn to be spoke by Lord *Anglesey*, as to giving up his Estate, may not be accounted for as the rash Expressions of a Man distressed in his Circumstances; but, *Gentlemen*, if you believe the other two Facts, that is, that Lord *Altham* did spirit away this Youth, and that he did carry on this Prosecution against him, the Question will then be, what Influence they ought to have upon this Cause. And how far they ought to conclude against the Defendant as to the Fact in Question, will deserve your Consideration, that the Plaintiff may not suffer by the illegal Acts of the Defendant, nor the Defendant be injured by your relying too much upon presumptive Evidence. If the Defendant did send away the Plaintiff, that Absence must be imputed to the Defendant. The Suppressor and the Destroyer of Evidence are to be con-

sidered in the same Light the Law considers a *Spoiliator*, as having destroy'd the proper Evidence; and against him defective Proof, so far as he has occasioned such Defect, shall be received, and every thing presumed to make it effectual. Nay, I think you may by Law go farther, and if the Plaintiff has given probable Evidence of his being the *legitimate* Son of Lord *Altham*, the Proof may be turned on the Defendant, and you may expect Satisfaction from him, that Lord *Altham* his Brother died without Issue; and this on account of that Evidence which the Plaintiff must be supposed to have lost, by the Defendant's having so many Years put it out of the Plaintiff's Power to assert his Right. And you will also consider whether these Acts are not Evidence to satisfy you, that the Defendant, in his own Thoughts and Way of Reasoning, considered the staying of the Boy here, as what might some Way prejudice his Title. But whether, as insisted upon by the Plaintiff's Counsel, you ought to take this as an Admission on the Part of the Defendant, that the Plaintiff was the *lawful* Son of Lord *Altham*, will deserve further Consideration. Undoubtedly, there is a violent Presumption, because no Man is supposed to be wicked without Design, and the Design in this Act must be some Way or other relative to the Title; but whether or no it was the Opinion of the Trouble he might have from this Lad, that induced him to do this Act, or a Consciousness that the Lad was the Son of Lord *Altham*, must be left to your Determination; keeping in your Mind, that this, though violent, is but a Presumption, and that the Defendant has an undoubted Title, unless it be proved that there be a Son of his elder Brother now living.

Taking the Influence of these wicked Acts with you, I shall now briefly mention the Nature of the Defence; which has been, first of all, by many Witnesses to shew that the Reputation of the Country was against there being, such a Child. Col. *Loftus*, who lived within eight Miles of *Dunmaine*, who was a Person of that Rank and Distinction in the Country, as was likely to hear it, says, he never heard of it. Colonel *Palliser*, Mr. and Mrs. *Lambert*, Mr. *Palliser*, Mrs. *Giffard*, have all gone like-

wise

wife to the same Point, and say, that they never heard of a Miscarriage. But their not hearing of a Miscarriage, has little Weight, because Things of that Nature are conducted with Privacy, and the Report of them seldom reaches far. In the next Place, they have produced the Persons, who, they say, were the Servants of the Family at the Time that this Birth must have been: Mrs. Heath my Lady's Woman, *Rolph* the Butler, who was there during that time, *Anthony Dyer*, who was Gentleman to my Lord, *Martin Nief* and *Owen Cavanagh*, Servants in the Family. Gentlemen, Mrs. Heath, *Rolph* and *Dyer*, are all positive, that there was no Child, and that there could be no Child, without their Knowledge; and Mrs. Heath goes so far as to say, there never was so much as a Pregnancy. These are positive Evidence, that stand in direct Contradiction to the Plaintiff's Witnesses. They have also produced *William Knapper* and *William Elmes*, to the same Point, both conversant at *Dunmaine*: *William Knapper* in particular, tells you, he was employed by the late Earl of *Anglesey*, to sell the *Ross* Estate, which came to him upon Lord *Altham's* Death without Issue, and that though he made a hundred Articles for Leases of the *Ross* Estate to the Tenants, he never heard one Objection made that there was a Son. They then went into another Piece of Evidence, which, if true, stands in the Place of positive Evidence, because inconsistent with Lady *Altham's* being delivered of a Child at the Time deposed; and, that was my Lord and Lady *Altham's* going to *Wexford* at the *Spring Assizes*, held the 16th of *April*, 1715, and returning from thence to *Dunmaine*, and going soon after to *Dublin*: Mrs. *Giffard's* Account is this, that there being some Men to be tried as Pretender's Men, the Curiosity of Lady *Altham* proposed a Journey to *Wexford*; that she accompany'd my Lady in the Chariot; that my Lord, Mrs. Heath and *Rolph*, rode; she says, when they came to *Wexford*, they lodged at the House of one *Sweeney*; that they went into Court and stayed there during the Trial, and that Mr. *Cesar Colclough* sat by them part of the Time; that they stayed a Week in *Wexford*, and then went Home; and, as appears by the

Examinations of *Heath* and *Rolph*, they went to *Dublin* in a very short time after, and stayed there all the *Summer*; *Heath* swears it positively, and *Rolph* that they stayed there 'till he went away. Now, *Gentlemen*, if this Fact could be established, it would undoubtedly put an End to the Controversy of this Day; because, if Lady *Altham* was at the *Affizes* of *Wexford*, which appears to be the 16th of *April*, that she continued there a Week, and went back and stayed but two or three Weeks at *Dunmaine*, and thence went to *Dublin*, where she lived the Remainder of the *Summer*; and this being at the Time when she was supposed to have been delivered of the Plaintiff; you will consider if both can be true. But this Fact has been disputed, and in this Manner; first of all, *Ker*, who was Clerk to my Lord Chief Justice *Foster*, who went that *Circuit*, tells you, that he does not remember to have seen any Ladies there; this is not a positive Proof, but it is a circumstantial one: The next is *Cæsar Colclough*, who swears that he does not remember to have seen them, and from the Business he was engaged in, the Gentleman on Trial being his Relation, he does not believe he sat by any Woman that Day. There were also two positive Witnesses produced to prove Lady *Altham* was not there, which were *Turner* and *Higginson*. *Turner* tells you, that he was at the House of *Dunmaine*, when my Lord went to that *Affizes*; that he saw him get into the Coach, and that he saw my Lady in the House after my Lord was gone. *Higginson* tells you likewise, that on the *Tuesday* of this *Affizes*, he was at *Dunmaine*, and the Occasion that brought him thither, (which makes him certain to the Time) was, to desire Lord *Altham* to send somebody to *Inniscorthy* for the 28 Pounds Arrear of Rent which his Son was to bring there. He tells you, that he saw my Lady, that she was undress'd, and that he believes she was with Child, and drank to her safe Delivery. And there is one Circumstance further which you should take with you, that Mrs. *Heath* says in her Account, the Sister of Mrs. *Giffard* went with them; tho' Mrs. *Giffard* said, no One went with them but the Persons she named, but did not name her Sister.

The *Defendant*, has also, in order to account for what has been said by the *Plaintiff's* Witnesses, as to the Child taken in by Lord *Altham* after the Separation, and who was carried by him from Place to Place, and treated as his Son, examined the several Witnesses produced by them, who were acquainted with Lord *Altham* and his Family, during the Time the Boy was with him, to prove that the Boy kept by Lord *Altham* was the Son of *Joan Landy* by Lord *Altham*, as was supposed; and that he was always considered and treated by that Lord as his *Bastard*. And thus, Gentlemen, you see how the Witnesses produced in this Cause stand, as to the most material Circumstances in direct Opposition to each other; so that the one or the other must speak false; which of them have done so, God only knows. You, *Gentlemen*, must, after taking the whole into your Consideration, say which, in your Opinion, deserves Credit. I shall now take Notice of the Objections to the Witnesses on each Side.

The Objections that have been made to the *Plaintiff's* Witnesses, as to their Uncertainty with Regard to Time and Place, and other Circumstances to which they were examined, were also made to the Witnesses for the *Defendant*; and if an Imputation arises from thence, you will consider whether it be not equal on both Sides. In the next Place, an Objection is made to the Condition of the Evidence for the *Plaintiff*, that they are Servants of the lowest Stations, and meanest Condition. You will consider how far that Objection ought to lessen, much less take away the Credit of their Testimony: Servants about the Family, tho' in the meanest Stations, were likely to know such particular Facts as they have given Evidence of. But on the other Side, you will consider that the Fact in Question, is a single Fact, which might be put in the Mouth of any body, and which has been affirmed and denied on Oath by the respective Witnesses. You will therefore, I think, find it necessary, with Caution to attend to the Objections made to the Credit of the several Witnesses that stand in Opposition to each other: For Instance, if the Credit of *Mrs. Cole* can engage your Belief as to the Circumstance of the Miscarriage, then.

then Mrs. *Heath* has not sworn true; because she has sworn the contrary, and that to a Fact which must have been observed by her. Again, if Mrs. *Cole* obtains Credit, Mrs. *Heath* must be mistaken in another Fact, tho' not of that Consequence, and that is, the Removal to *Dunmaine*; Mrs. *Cole* says, and Mrs. *Briscoe* too, that my Lord and Lady *Altham*, went to Lodgings in *Essex-Sreet*; Mrs. *Heath*, that they went directly from Capt. *Briscoe's* to *Dunmaine*. Now, Gentlemen, as to Mrs. *Cole's* and Mrs. *Briscoe's* Testimony, there is no Imputation, other than what arises from their Age, at the Time to which their Testimony relates, when the eldest of them could not be above Thirteen by her own Account, and she speaks to a Fact, which Mr. *Prime-Serjeant* thinks was not likely to engage the Attention of so young a Person, I mean the Place to which they removed; but you will consider, whether the Removal of my Lord and his Lady from their Family to another Place in *Dublin*, especially as an Intimacy was kept up between them, be not sufficient to answer that Objection. As to the Circumstance of the Miscarriage, there she is extremely positive, and probably the Curiosity of Girls of her Age, in these Matters, exceeds that of grown Persons. There was an Observation made as to the Word *Abortion*, but I think there can be no great Weight laid upon that, the Term may have been learnt since. There has been also a Witness produced to discredit Mrs. *Heath*, as to the very Substance of her Testimony; what he has said must be fresh in your Memory, but you will remember the seeming Art made use of by him, to shew he was compelled to give his Testimony. Besides, his Testimony is not supported by Circumstances, but is another Instance of Oath against Oath.

Gentlemen, the next Witness I shall take notice of, is *Rolph*: (I don't speak regularly to them, intending only to take up the most material). He certainly delivered his Testimony in a very clear Manner; he gave an Account of his coming to and living in the Family, and of his Continuance in it, and manner of leaving it; and there is one Circumstance that gives Credit to *Rolph*, and he is

the only one that can be said to receive Credit from the Witnesses on the other side; the *Plaintiff's* Witness *John Scott*, has said, that *Rolph* was *Butler* before, and continued after my Lady's Delivery; which agrees with *Rolph's* Evidence, but varies from all who have spoke to the Birth; who say that *Rolph* was gone; that *Maghir* lived there at the Time of *Doyle's* and *Murphy's* being there. *Dennis Redmond* does say, there was such a Servant as *Rolph*, but that he was gone before the Delivery. But then you will consider what Figure this *Rolph* made on his cross Examination; such an absolute Uncertainty as to every thing but what he was brought to disclose, and his Readiness to give Evidence on one side of the Question, necessarily induce Suspicion; and you will consider his Attempt to throw a Reflection on the *Plaintiff*, as if those concerned for him would have tamper'd with *Rolph*: But the Story carries an Improbability in it, that a Man should send Victuals before him, and come and offer to a Stranger what was not in his Power to give, and that in such an open manner.

[Here Mr. *Baron Mountney* spoke to the *Lord Chief Baron*.]

Gentlemen, my Brother *Mountney* mentions one Thing, which I am mistaken in, if he is right; he says, that when Mr. *McKercher* made the Offer of a Lieutenantcy to *Rolph*, his own Company were only present; I do apprehend there was not only the Company of *McKercher*, but the Company that was with *Rolph*. Gentlemen, if I mistake the Evidence on either Side, impute it to my Memory, for I have no Intention to misrepresent, and should be extremely glad if any body would set me right: When you come to look upon your Notes, you will see how this Fact stands. But there is one Thing I would observe as to the Testimony of *Rolph*, and that is, that Mrs. *Giffard* and he differ: *Rolph* has said, that the new Road leading from the House of *Dunmaine* to the *Cabbin* was made for the Benefit of going to Mrs. *Giffard's* and Colonel *Palliser's*, and that Mrs. *Giffard* always went that Way: Mrs. *Giffard* says, that she never went that Way, but always by the *Bridge*. These are slight Cir-

cumstances; but however, where Witnesses stand in such direct Opposition to each other, they deserve some Attention.

Anthony Dyer, Gentlemen, is another material Evidence for the *Defendant*. But you will consider how far his Credit is affected by what I am going to mention. The Witnesses on both Sides have said, that after the Separation of Lord and Lady *Altham*, the Child, be it *legitimate* or *illegitimate*, came into the House of *Dunmaine*. *William Elmes* fixes it to three Weeks after, and another to a Month, but this Man says, that he was there at the Separation, and three quarters of a Year after, and swears, there was no Child in the House during that Time. As to the positive Evidence on the part of the *Plaintiff*, *Doyle* and *Murphy*, the Observations on them as to their coming into the Service, have been made, and are extremely strong. *Murphy* did say that *Doyle* came there first, she afterwards chang'd, and said, she came there before *Doyle*: You will consider also the Manner in which they give their Evidence. And in regard to Mr. *Palliser*, Mrs. *Lambert*, and those People that spoke to the Pregnancy on the Part of the *Defendant*, they have gone so far, that if you believe them, there could not have been a Miscarriage. There is one Thing I forgot to mention, to strengthen the Evidence of Mrs. *Cole*, and weaken that of Mrs. *Heath*, which is, that *Lambert* said, that *Sutton* the Surgeon was sent for to *Ross*, and stayed at *Dunmaine* a Fortnight: Now when you come to compare the Times of his being sent for, and the Miscarriage, you will consider, whether it does not tally pretty near with the Time when Mrs. *Cole* gives an Account of the Miscarriage, and yet Mrs. *Heath* says, he never did attend my Lady.

There is one general Observation to be made on all the Evidence; and that is, that there is a Forwardness, an Inclination to go on to serve their Party, on both Sides, and that they want that Candidness which gives a Credit to Witnesses: I say not this on either Side, but you will consider whether it is not an Observation that runs through the Whole. I shall not trouble you with respect.

respect to the Surgeon, the Objection to him arises from the Improbability of his own Testimony. As to *Christopher Brown*, who was one of the Servants attending at Dinner at the *Christning*, supposing what he says could be credited, you will consider how that Man was mistaken in the Description of the House. And you will permit me to observe, that there is a great Difference between not recollecting Circumstances, and a Witness swearing to those that are false; the not recollecting, may consist with Integrity, the Swearing to a Falshood never can, nor can you give any Credit to such a Witness; because you can't say that he is wrong as to this, and right as to that Part of his Evidence. With regard to the several Witnesses who say the Child, from first to last, was not only reputed, but called a *Bastard*, and *Joan Landy's* Child, and that the Boy knew it, and sent his Duty to her as his Mother; you will consider how consistent that is with what *William Elmes* and others have said, who would have it understood that my Lord had rather than Five hundred Pounds that the Child should know his Mother; and that my Lord ordered them to set the Dogs upon her if she came near the House; and yet those who speak of him at *Kinnea* and *Carickduff*, say, that my Lord has often cursed him, for having too much of his Mother's Blood in him. How these different Accounts can be reconciled, you must consider. There is one Witness more, on this head, that I must take Notice of, and that is *Elizabeth M'Mullen*; and she would have it understood, that out of the Mouth of the Boy himself, at the *Funeral* of his Father; upon being asked by her, who was his Mother, he said *Joan Landy*. Gentlemen, you will compare this with the Testimony of Mr. *Bushe* and Mr. *Tighe*; the Boy, when he lived with Mr. *Bushe*, persisted that he was my Lord's own Son, and the same at Mr. *Tighe's*: Now, if the Boy had once received the Notion of his being the lawful Son of Lord *Altham*, you will observe the Improbability there is of his saying to her, a Stranger, I am the Son of *Joan Landy*. I will carry this a little farther, and that with regard to the Letter, she says, was wrote by her, giving an Account of Lord

Altham's

Altham's Death ; if this Circumstance be false, that Letter must have been fictitious, and of later Date.

I have now mentioned the Evidence on both Sides ; and from what I have observed to you, it does appear, that here is such a clashing of Witnesses, such contrary Evidence, that though some Circumstances might be reconciled, yet others will remain irreconcilable ; and therefore I must, and, I think, you *Gentlemen* will be obliged to consider the Circumstances that will throw a Probability or Improbability upon the Testimony you have heard. The strong Circumstances which induce Probability in Favour of the *Plaintiff* are those I have mentioned, of *spiriting* him away, and afterwards, attempting, by an unjust Prosecution, to take away his Life ; to which I have before spoken at large, and need not repeat. On the Part of the *Defendant*, the Circumstances are of a different Kind ; and those are such as relate to this Family, from the Beginning of the Transaction to the End, and arise from the Quality and Circumstances of the Persons, which, as has been urged, must have rendered a Fact of this Kind too notorious ever to have been doubted, especially in *this Kingdom* : That it must have been known to the Relations of this Family in *England*, whose Estate and Honours were to be enjoyed by that Son ; that my Lord *Altham* himself ought to have made it publick ; and that it was the Interest of Lady *Altham*, that the Duke of *Buckingham*, her Father, should know that she was with Child. Again, you will consider the Improbability arising from the Place where he was born ; at *Dunmaine*, in a remote Part of the Country, attended by a Country *Midwife* and the *Surgeon* you have seen. Ladies, say they, of her Rank, would not submit to it, and are usually placed, on such Occasions, where they can have the best Assistance ; and the Consequence of a Child, to this Family particularly, required it. In the next Place, you will consider, whether there be not a farther Improbability arising from the *Nurse* ; that a *poor* Body should be employed is no wonder, but that an *infamous poor* Body, rendered infamous, as was supposed, by my Lord, and in that very Place, should be taken by my Lady to nurse

nurse her *legitimate* Child, is scarce to be accounted for : There is nothing said to reconcile this, but the Testimony given by *Laffan*, and she tells you, that this was a Secret, not disclosed to my Lady, till after the Separation : Indeed if you believe this, the Improbability will decrease ; but you will find it difficult to suppose my Lady the only Person in the Family to whom this was a Secret. The Place where the Child was nursed, has been also urged ; but the Difficulty is not that a Nobleman's Child was nursed at a poor Man's House, but whether that House was fit to receive a Child intended to be preserved ; and therefore the Probability or Improbability, in this Instance, will depend upon the Credit you shall give to the different Accounts of the *Cabbin* where this Nurse lived. It has been further said, that the *Sponsors*, at the *Christning* of this Child, ought to have been of high Rank, and from among the Relations of this Noble Family. Again, this Child, after the Separation, was removed from Place to Place, and we have not heard that Lady *Altham*, either by herself or Friends, took any Care or Notice of him, except the single Instance at *Rast*. Was it not Lady *Altham*'s Interest to have acquainted the Duke of *Buckingham* that she had a Son by her Lord, that he had sent him away, and put his Child into the Care of his *Whore* ? And was it not probable, if this Notice had been given, that Care would have been taken of this Child, by some of the Family ? The little Care taken of his Education by my Lord, has also been urged. In Answer to which, you have been reminded of the Character and Circumstances of Lord *Altham*. Again, my Lord's parting with this Child, or rather exposing him, in the Manner you have heard, can't, as it is said, be accounted for, supposing him to be the *real* Son of Lord *Altham* : But this also is attempted to be answered, by the Influence of Miss *Gregory*, and her representing him as a *Bastard*, in Respect to my Lord, though born in *Wedlock* : But, say the Counsel for the *Defendant*, supposing the *Plaintiff* to be, what they have endeavoured to prove, a *Bastard*, the whole may be reconciled. But if the Inhumanity of exposing this Child raises the Ob-
jection

jection, you, *Gentlemen*, will consider, whether a Person capable of treating his own *Bastard* in that Manner, may not be supposed capable of being worked up, by a bad Woman, to turn his *legitimate* Child out of Doors. The Inhumanity seems equal in both Cases, as both are intitled to the Care and Protection of the Father. I had almost given the Preference to the *natural* Child, as the *legitimate* does not stand in equal Want of it; the Mother, the Family may take care of him, but the other is a *Cast-off*. But, *Gentlemen*, though this Objection may be removed, with respect to the Father, it makes the Objection very strong when applied to the Mother: The Sufferings of the Child in this Manner, were what one would expect should have excited and called for the Mother's peculiar Care: That she was not ignorant of it, you will gather from the Testimony of *Catharine O Neile*; and you will consider the Manner in which the Mother is supposed to treat that Child: "I should be glad to see my Son, but I know it would cost the Servant that brought him, his Bread." It must be a weak Affection that could, for that Reason be prevailed on not to see the Child. This Lady lived two Years after the Death of her Husband, and we do not find any Evidence of her Care for this Son; which has been urged also to shew, that he was not her Son. Again, it was her Interest to take Notice of this Child; it has been mentioned, and not denied, that there was an Estate of Twelve Hundred Pounds a Year that went away on the Death of Lord *Altham*, and would have gone to this Son, if *legitimate*. It was insisted upon, that Lady *Altham* might have applied for the *Guardianship* of her Son, and have had a good Allowance made by the *Lord Chancellor*, for the Discharge of that Trust, which she wanted. I must also observe the additional Weight they gave to this Objection, from the Testimony that *Welsh* gave, of her declaring that her Heart would break, were it not that she had a promising young Son, who would be a Support to her in her old Age. Alderman *King*, at whose House she resided fourteen Months, a Man of Integrity and Truth, whose Credit cannot be contro-

controverted, says, he never heard her mention her having a Son, tho' the Intimacy of dining at one Table, for that Time, must probably have afforded frequent Opportunities of doing so. And whether a Woman, under the Affliction of a Separation, and her unhappy Circumstances could have concealed such a Fact, is worthy your Attention.

There was another Matter urged, as an Improbability, from the Testimony of Colonel *Wall*. I shall state to you how that Fact stands. Colonel *Wall* said, he had taken an Opinion for Lord *Altham*, as to the Power he had over the *Anglesey* Estate: That, according to that Opinion Lord *Altham* was *Tenant in Tail*, and might have barred his Issue, and by that Means, have had it in his Power to raise more than by the Sale of his reversionary Interest, supposing he was only *Tenant for Life*, expectant on the Death of the then Earl. But the same Witness also said, that he would not, upon the Credit of this Opinion, carry the Title to Market, and that, notwithstanding this Opinion, he was very angry with his Brother, the now *Defendant*, for refusing to join with him in selling their Reversions. So that Lord *Altham's* reversionary Interest being certain, and his other depending on an undecided Question in Law; you will consider, whether, upon these Views, he was more likely to have made publick, or concealed his having a Son.

Having now gone through with what I proposed to say upon the Evidence, I shall, only in general, take notice, that it will be proper for you, *Gentlemen*, while you are considering this Case, to take with you the Characters of the Persons Actors in it; and thence to judge what was, or was not to be expected from them. Again, if there are, as I suppose there will be, of the *Plaintiff's* Witnesses to whom you will not give Credit, you will consider, whether the *Plaintiff* in Justice ought to be affected thereby: You will consider him as reduced, by the *Defendant*, to the Necessity of making use of such Evidence as offered; and in such case, bad Witnesses may have obtruded themselves, or Art may have been used to put them

them in his Way; so that unless it appeared that the *Plaintiff* made use of them, knowing them to be bad, they ought not to be placed to his Account. You will also consider, that though you have only the *Defendant* before you, yet the Remainder, Men, who do not derive under the *Defendant*, are to be affected by your *Verdict*, and ought not to be postponed, unless you are satisfied that the *Plaintiff* is the *legitimate* Son of Lord *Altham*: Therefore you must consider, (taking the Proofs, the Probability and the several things together) whether the *Plaintiff* be the *lawful* Son or not; if he be, you must find for the *Plaintiff*; if not, for the *Defendant*.

Gentlemen, I forgot to mention the Evidence of my Lord *Mount Alexander*, and of Mr. *Medlicot*, concerning Lord *Altham*'s Declarations, as to his having a Son. Lord *Mount Alexander* told you of an Expression of Lord *Altham*'s to one Mr. *Crow*, an Expression not very easy to be understood. “*My Wife has got a Son, which will make that Rake my Brother's Nose swell.*” Which has been applied to the Son now in Question: You will consider, whether it concludes necessarily to that, or whether Lord *Altham* might not have in his Imagination some other Child begot on the Body of my Lady. There was an Intimation of a Son by one *Segrave*, who might be then living; how far this Rumour was in my Lord's Mind, is hard to say; but if this was not in his Thoughts, the Expression is extraordinary. “*My Wife has got a Son.*” This might be said of such a Son, but you will consider whether it was a Manner of Expression for a Son of his own, born in his own House. As to Mr. *Medlicot*, the Words sworn to by him were, that my Lord should say, “*I have no Child, nor know that I ever shall, I don't care if the Devil had the Estate.*” If my Lord looked upon the Son by his Lady to have been begot by another Man, consider, if the Words import more than this, I have no Son, no Son that I suppose to be my own, I don't care if the Devil had the Estate.

But taking each Set of Words as contended for by each Side, all that can be said is, that my Lord has at different times varied his manner of speaking on this Subject.

ject; whether you can find out the Motives inducing him so to do, or can draw any Conclusion therefrom, must be left to your Consideration. I shall think myself happy, if any thing collected by me can assist you in the Discovery of Truth.

Mr. Baron Mountney. Gentlemen of the Jury, My Lord Chief Baron hath summed up this Evidence in so full, so judicious, and so masterly a Manner, that it would be a very improper Task for me to attempt to go again with you over the Evidence at large.

I shall therefore confine myself to some of the more capital Parts of the Case: and (altho' I am extreamly sensible in how inaccurate and disjointed a manner I shall lay my Thoughts before you, yet) with the Hope of striking out even the smallest Spark of Light, which may help to guide you through this dark Affair, I shall endeavour to recollect a few Remarks on those Parts of the Evidence which strike my Understanding in the most forcible Manner.

And, Gentlemen, I shall take up the Case where the Evidence for the Plaintiff, and the Observations of the Defendant's Counsel, closed; I mean the KID-NAPPING of the Lessor of the Plaintiff, and the PROSECUTION FOR MURDER carried on against him by the Defendant.

The latter of these two Facts I shall consider first: It is proved by John Giffard, the Attorney employed to carry it on; and in the course of his Evidence, Gentlemen, several things occur, which though not relative to that Prosecution, are yet extreamly material for your Consideration.

In the first place, Gentlemen, he relates to you a Conversation between the Defendant and himself so long ago as the Month of March 1741. and the Occasion upon which that Conversation happened. He tells you, that at that Time it was the common Topic of Discourse, that Mr. Annesley was returned from the West-Indies to assert his Right; and that the Defendant my Lord Anglesey was at that Time embarrassed with a Variety of
Law-

Law-Suits—that my Lord expressed great Uneasiness upon both Accounts—and thereupon told him, that “ he
 “ should be very glad to send to Mr. *Annesley*; and if he
 “ would allow him 2 or 3000 *l.* a Year, he would sur-
 “ render up to him his Titles and Estates, and go live
 “ in *France*; for he should be much happier than to be
 “ so tormented, and had rather his Brother’s Son should
 “ have it than any body else; for if *Jemmy* had the
 “ Estate, he should live easy in *France*, for it was his
 “ Right, and he would surrender it to him; — that he
 “ did not value the Title—he would go live in *France*;
 “ and that he might live the easier there, would send
 “ for a *French* Master to converse with him in that
 “ Language.”

The Counsel for the *Defendant*, Gentlemen, with great Art and Ingenuity endeavoured to avoid the Force of this Evidence: And in the first place, they represent this Declaration of my Lord with regard to a Compromise, and his going to *France*, as an *hasty, passionate* Expression, flowing from his *Uneasiness of Mind*, on account of the ill Situation of his Affairs, and his Resentment against the *Annesleys*.

But, Gentlemen, upon *Giffard’s* Evidence, this could not possibly be the Case; for he tells you, it was my Lord’s Resolution—that he *continued* in that Resolution from the Time of the first Conversation, which was before the 10th of *March* 1741 to *May* 1742. — that in *Pursuance* of that Resolution, he actually did (as he had declared he would) send for a Person, one *Stephen Hayes*, and had him in the *House*, to converse with him in *French*; and that he, the Witness, was present forty Times.

The next thing, Gentlemen, suggested by the *Defendant’s* Counsel was, that my Lord *Anglesey* (in his then uneasy Situation, and so *angry* with the *Annesleys*, as *Giffard* said he was) might possibly be induced to wish for such an Accommodation as was mentioned with the *Lessor* of the *Plaintiff*, not through a Consciousness of his being the legitimate Son of the late Lord *Altham*, but with a View of gratifying his *Resentment*, by disappoint-

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ing the *Annesleys*, and at the same time of *promoting his own Interest* by securing to himself a larger Share of the Estate than would otherwise remain to him.

But, Gentlemen, when you consider the following Part of *Giffard's* Evidence, you will find, that neither can *this* Interpretation hold: Because, if *this* had been the Scheme, my Lord must certainly have persevered in it. Whereas, upon the unhappy Accident of Mr. *Annesley's* killing a Man, this supposed Scheme is abandoned, and another (much more beneficial, as *Giffard* told you, for the Defendant, and absolutely destructive of the other) is immediately embraced; which was, to carry on a Prosecution against Mr. *Annesley* for that Fact, and, if possible, to get him hanged.

Consider now, Gentlemen, the Evidence concerning that Prosecution, and the Circumstances attending it.

The first of May is the Day on which the Murder is in the Indictment laid to be committed.—On the second, Lord *Anglesey* retains *Giffard* to go down to *Staines* to collect Evidence, and to carry on the Prosecution.—On the fourth, the Coroner's Inquest finds it *Wilful Murder*—Before *Giffard* returns from *Staines*, my Lord goes down to *Hounslow* to meet him, in order to learn how Things went on; and declares to him that he did not care if it cost him 10,000 l. if he could get Mr. *Annesley* hanged.

Quo Animo are these things said and done by the Defendant? Upon what Grounds was it that the noble Lord thus officiously interposed upon this Occasion? that he shewed so much Impatience to learn HOW THINGS WENT ON? that he actually expended such large Sums of Money, as *Giffard* expressly tells you he did (I think no less than 800 l.) and declared himself ready to expend much larger, in carrying on this Prosecution?—Was it for the Sake of Justice?—If so, Why all those Precautions, that Contrivance, which you were told of, that my Lord might not appear to be concerned in it?—If not for the Sake of Justice,—then, Gentlemen, you are to consider upon what other Principle and Motives this extraordinary Conduct

can be accounted for.—And this will be the less difficult for you to do, when you shall compare these Facts and Circumstances with the *Reason* given by my Lord for that remarkable Declaration of his as to the 10,000*l.* which *Giffard* swears positively my Lord mention'd to him—viz. *He did not care if it cost him 10,000*l.* if he could get him hang'd*; “for THEN he should be *easy* in his Titles and Estates.”

There is another Part of *Giffard's* Evidence, which, as it strikes me strongly, I shall mention for your Consideration; and that is, that my Lord told him (fifty times I think he said between the 7th of *December 1741*, and the 14th of *July 1742*, which was the Day of the Trial) that this *Pretender*, as he called him, was transported for stealing a *Silver Spoon*.

You will consider, Gentlemen, what Weight this Circumstance may have when coupled with the Complaints made against him by Miss *Gregory* of *thieving*—with what the Witnesses, who prove the several Attempts upon the Boy, and at last the actual Transportation of him, have told you of my Lord's repeatedly calling him a *thieving Son of a Whore*---and with the particular Charge which one of them swears my Lord made against him of *having stolen from him a Silver Spoon*.

I have endeavoured to state to you, Gentlemen, the main Substance of *Giffard's* Evidence: In order to avoid the Force of it, the Counsel for the Defendant have strongly insisted upon two Objections to his *Credit*.

The first is, that understanding, as he owns he did, that my Lord *Anglesey* by his Declaration as to the 10,000*l.* meant, that he intended to *destroy* Mr. *Annesley* if he could, and that he would expend that Sum in *Means to have him hanged*, he did not decline being further engaged, but still continued to carry on the Prosecution.

And indeed, Gentlemen, it does to me carry with it an Imputation upon *Giffard*, that he did not immediately fling up any Concern in this, or any other Business of my Lord's, and publish this Declaration to all Mankind. But, Gentlemen, you will consider on the other hand what *Giffard* hath said in Excuse of himself. He tells you,---“ If there
“ was

“ was any *dirty Work*, he had no Hand in it. *He distinguisheth between a bad Purpose and the carrying on a legal Prosecution---and he tells you, that the Coroner’s Inquest having found the Fact Wilful Murder, he thought that a sufficient Foundation for him to proceed.*”

The other Objection to his Credit is, that being an *Attorney* retained by Lord *Anglesey* to carry on this Prosecution (in any Suit between Mr. *Annesley* and my Lord, he swears positively he never was, nor ever expected to be retained) he comes here *voluntarily* to disclose the *Secrets of his Client*.

Now, Gentlemen, as to the Prosecution, you will observe, that the *Original Discovery* of my Lord’s being concerned in it was *not voluntarily* made by the Witness; for he tells you, that he found himself under the Necessity of serving my Lord for a large Sum of Money, which remained due to him upon his Bill of Costs; and that, upon his so doing, my Lord filed a Bill against him in the Court of *Exchequer* in *England*, in his Answer and Schedule to which he was obliged to set forth the particular *Items* of his Bill of Costs---that by this Means (as he supposeth) Mr. *M. Kercher* got Knowledge of it, and thereupon applied to him to give his Testimony in this Cause.

As to the *Conversation* between my Lord and him, I have already declared my Sense so fully, when the Point was debated, whether Evidence of it should be admitted or not, that I shall trouble you with a very few Words only upon it now.

Gentlemen, I can by no means allow it to be any Objection to the Credit of the Witness, that he *voluntarily discloseth* that which the Court hath unanimously determined he was *compellable to disclose*. And I must say this farther, that, in my Apprehension, *Giffard* could not have justified himself, either to God or Man, if he had *not disclosed* it; especially, as it was a Declaration wantonly made to him, not under the seal of Friendship, nor of that Confidence which is necessary between *Client* and *Attorney*.

Gentlemen, you are the Judges, and you will carefully consider what Degree of Credit to give to this and every

other Witness who hath been produced upon this Occasion; and God forbid, that any Part of the Evidence, any Argument, or any Observation, should have more, or less, Weight with you than it will bear.

If you believe the Evidence of *Giffard*, you will then consider, that you have an *express Acknowledgment* of Right in the Lessor of the Plaintiff from the Mouth of the *Defendant*;---that, independently of this, you have Declarations and *Facts* which *strongly import a Consciousness* of that Right.---And lastly, you will consider what Strength this Evidence of *Giffard* adds (if any Strength is wanting) to the Evidence of the KID-KNAPPING in 1728.

That Fact, *Gentlemen*, stands positively and fully proved by a Multitude of Witnesses, neither *discredited*, nor, as it was promised by the Defendant's Counsel, *contradicted*. And, indeed, if that Fact was *not so clearly* proved, the Evidence of Mr. *Shelero's Ashe* is, in my Apprehension, sufficient to silence the least Doubt about it.

You will then consider, *Gentlemen*, if you believe that Evidence, whether there does not from thence arise the most *violent Presumption* of the *Defendant's Knowledge of Title* in the Lessor of the Plaintiff.

It is represented to you by the Defence, that it was notorious to every body conversant in that Noble Family, that Lady *Altham* never had a Son in Ireland---that she never miscarried---that she never was *with Child*. On the other hand, that it was equally notorious, that my Lord had a Son by *Joan Landy*---and that the Lessor of the Plaintiff was that Son. Now, if this were the Case, for Heaven's sake, *Gentlemen*, what Apprehensions could the Defendant possibly be under from a Boy, who, if he had set up any Claim to the Title and Estate, must *inevitably* have been detected as a most notorious Impostor?

But if, on the other hand, this Boy was the *legitimate* Son of Lord *Altham* (and whether he was or not, must certainly lie in the Knowledge of the Defendant) then, *Gentlemen*, you will consider whether this *Kid-knapping* and this *Prosecution* will not be easily and naturally accounted for, and whether any other, *adequate*, Cause than a Knowledge of his being so, can, with any Degree of

Pro-

Probability, be assigned for this extraordinary, this iniquitous Behaviour of the Defendant.

But Gentlemen, the Counsel for the Defendant have told you, that the *material* Fact in this Case is the *Birth*; and unless that is *uncontestably* proved, that the Plaintiff cannot possibly avail himself of any *Presumptions* (an ingenious Gentleman chose generally to call them *Suspensions*) which arise in this Case.

Gentlemen, I differ entirely from them upon that Head.—If *that*, which to be sure is the material Fact, were proved to you *incontestably*, the Plaintiff would then have *no Occasion* for *Presumptions*. *Presumptions* then only are, or can be, of use when the Fact in dispute is not, nor can be, proved *incontestably*.

Gentlemen, as this Assertion hath been so strongly insisted on, and hath had so much Stress laid upon it, by every one of the learned Counsel, let me detain you a little to make a few Observations upon the Subject of *Presumptions*.

Presumptions, Gentlemen, have at all Times, and in all Laws which I have ever heard of, particularly in our own, been allowed to have great Weight in doubtful Cases. Some are of so high a Nature, that the Law will not admit of any *Proof to the contrary*:—and these are called *Presumptions Juris & de Jure*.—Again, there are *Presumptions of Law*; as likewise what the Writers upon this Subject call *Presumptions of Man* (such as are collected occasionally by Man's Understanding from given Facts) which, tho' they fall short of that Strength and *conclusive* Force which the others have, are yet to stand in the Place of full Proof till the contrary is proved.

“ *Violenta Præsumptio* is many times *Plena Probatio*,” are the express Words of my Lord Coke; and the Case which that great Oracle of the Law puts upon it, is this:
“ A Man is run through the Body with a Sword, in an
“ House, whereof he instantly died—A Man is seen to
“ come out of that House with a bloody Sword, and no
“ other Man was at that time in the House.” Upon these Circumstances, Gentlemen, a *violent Presumption* arises,

arises, and shall stand for *full Proof*; unless the contrary can be proved, that That Man was the Murderer.

Now, Gentlemen, you will observe, that in the Case put (and many others of a like, or even inferior Kind, may be put, in which great Numbers of the King's Subjects daily suffer *capitally*) the Jury from *Circumstances* infer a criminal *Fact* committed by the Person accused.—*A fortiori* it should seem reasonable, from a criminal *Fact* proved, to infer the *Circumstances* and *Motives* leading to that *Fact*.

Mr. Serjeant *Marshall* very properly mentioned to you the Case of the *Spoilation of a Deed*.

In that Case, Gentlemen, it is an established Maxim, “That all Things are to be presumed in *Disfavour* of “the Spoliator.” And you will consider, whether a Parity of Reason will not operate strongly in the present Case. Mr. Serjeant's Reasoning on this Head was entirely agreeable to what I remember to have heard laid down by one of the greatest Men who ever sat in a Court of Judicature, *viz.* That *Circumstances* were, in many Cases, of greater Force, and more to be depended upon, than the *Testimony of living Witnesses*.

Witnesses, Gentlemen, may either be *mistaken* themselves, or wickedly intend to *deceive* others. God knows, we have seen too much of this in the present Cause on both Sides! But *Circumstances*, Gentlemen, and *Presumptions*, naturally, and necessarily, arising out of a given *Fact*, cannot lie. And, Gentlemen, it must be left to your Consideration, whether in this Case the *Presumptions* arising from the *Kid-knapping*, and the *Prosecution for Murder*, do not speak stronger than a thousand Witnesses.

The next Observation, Gentlemen, which naturally ariseth from the *Kid-knapping* is, that the *Lessor* of the *Plaintiff* is thereby thrown fifteen Years back in his Evidence.—If his Case had come under your Consideration, or that of any other Jury, *soon after the Death* of the late Lord *Altham*, it would not have been attended with the Difficulties it now is, but must have received a very easy and clear Determination. Mrs. *Shields*, who is sworn to have

have brought him into the World,—the *Clergyman*, who is sworn to have *christened* him—the Persons, who are sworn to have been *Sponsors* (with many other material Witnesses) were probably all, or most of them then *living*, and might have borne their Testimony. — The Account which you now have of them is, that they are *all dead*.

In the next Place, Gentlemen, you are to consider the *Dangers* to which this Gentleman lies open in asserting his supposed Right;—on the one hand, from Witnesses officiously *obtruding themselves*, and on the other, from Witnesses who may have been industriously *obtruded* upon him. And if you believe that these Difficulties have been occasioned by the wicked Act of the Defendant, you are then to consider whether a much slighter Evidence, than might otherwise have been required, will not satisfy you, in a Case thus circumstanced, of the Truth and Justice of his Claim.

But, Gentlemen, the Counsel for the Defendant farther tell you, “ that altho’ you might possibly be induced
“ to *think* the Defendant *capable* of committing a wicked
“ Act, yet *that* ought not to influence your Judgment
“ as to the Determination of his *Property*.”

And, Gentlemen, I must agree that a wicked Act, nay repeated wicked Acts, *in general*, ought not to influence your Judgment.---But if the Defendant hath committed a most wicked Act *against the Person*, who then asserted himself to be the Son of Lord and Lady *Altham*, and who is now contesting with him his Title and Estate ---if he hath done *another* very extraordinary, tho’ legal, Act against him,---in a clandestine Manner,---and coupled with a Declaration *highly criminal*,---This, in my Opinion, may, and ought to have great Weight with you upon this Occasion.

Another thing, Gentlemen, insisted upon by the Defendant’s Counsel was, that if the Case be *doubtful*, the *present Possession* ought to turn the Scale in Favour of the Defendant.

Now here I must again differ from the learned Gentlemen. If indeed upon the *whole* Evidence the Case stands

doubtful, they say well: But if upon the *direct* positive Evidence the Case is ballanced, then, Gentlemen, the *Kid-knapping* and the *Prosecution* will, in my Apprehension, turn the Scale in Favour of the Plaintiff. For a *violent Presumption* is to stand for Truth *till the contrary is proved*.---Now if upon the positive Testimony on both Sides, the Mind remains in *equilibrio*---then, Gentlemen, the contrary is *not proved*, and consequently the *Presumption stands*.

I cannot help saying that I think it pretty extraordinary in this Case, that so many Objections should be raised, and so much Stress laid upon them, against your being influenced in your Judgment by *Presumptions*---by *Suspicions*---by *Probabilities*.

Gentlemen, their *whole Defence* is built upon *Probability* and *Improbability*.

They first tell you, you are to judge not upon *Probabilities*, but upon *positive Proof* of the material Facts; and to that *positive Proof*, when given, they tell you you ought to give no Credit, for it is *improbable*.

There was one Objection of this sort which I forgot to mention, and that was as to the Proof of the *Kid-knapping*; they told you, Gentlemen, that altho' the Defendant could be supposed *wicked* enough to commit such a Fact, yet it was inconceivable that he should be so *weak* as to do it at *Noon-day*---that he should carry the Boy thro' a *publick Market*---nay, by the very Stall of *Purcell*, who had before protected him---(by-the-bye, Gentlemen, you will remember that the Boy was charged with *Felony*, and carried off by *known Constables*) and the same Objection, I think, was before made to *Giffard's* Testimony, that it was utterly incredible, that any Man living should be so *weak* as to put himself into the Power of any other Man, by making such Declarations as *Giffard* swore my Lord made to him.

I must own, Gentlemen, that this Objection does not to my Understanding carry any great Weight with it.

Wickedness and *Weakness* generally go hand-in-hand together; and upon the repeated Observation of their doing so, is founded that well-known Saying.

“ Quos

“ *Quos Deus vult perdere prius dementat.* ”

The next Part of the Case which I shall speak to, is the Evidence of Mrs. *Heath*, as it stands opposed to that of Mrs. *Cole*; and the Evidence of *Rolph* opposed to that of Mrs. *Colclough*, *Turner*, and *Higginson*.

It was my Desire that Mrs. *Cole* and Mrs. *Heath* might be confronted, because I did then, and do still, think that this Case may receive great Light, and may be greatly narrowed for your Determination, by a careful Consideration of *Cole's* Evidence, as it stands in direct Contradiction to the Testimony of *Heath*, whom I look upon as a capital Witness, and one of the main Pillars of the Defence.

In other Parts of the Case, Gentlemen, you meet with many Variations between the Witnesses, as to *Periods of Time*, and other minute Circumstances, which will not be of much Consequence in the Cause, or tend to impeach the *Credit* of those Witnesses on the one Side, or the other—But when once you come to a Fact in which two positive Witnesses flatly contradict each other—a Fact, the Truth or Falshood of which, the Witnesses on each Side must, with as much Certainty and Exactness, know at the Time she gives her Testimony, as she did at the Time that Fact is said to have happened, let it be ever so long ago—so that one of them is, to *Demonstration*, perjured; then, Gentlemen, it becomes exceedingly material for you, to consider which of two such Witnesses you will give *Credit* to; and your Determination of that Point, may go a great Way towards enabling you to form a Judgment upon the whole Case.

The first material Circumstance which occurs to me, in which *Cole* and *Heath* differ, is as to the going, or not going, away of Lord and Lady *Altham* from Captain *Briscoe's* (at whose House the Reconciliation was brought about) to my Lord's Lodgings at *Vice's* in *Essex-street*.

Mrs. *Heath* swears positively, that, during their Stay in *Dublin*, they never lodged one single Night out of the House of Captain *Briscoe*—Mrs. *Cole* (supported by her,

Mrs. *Briscoe*—by *Alice Bates*, a Servant in her Father's Family—and by *Catherine M^c Cormick*, *Vice's* Servant) swears as positively, that after staying four or five Days at her Father's, they went to Lodgings in *Essex-street* (as to the Person's House she is not positive, but she takes it to be *Vice's*) and there continued a considerable Time, I think about *two Months* before they left *Dublin*, and went to *Dunmaine*. And Gentlemen, you will remember that Mrs. *Cole*, when she was a second Time produced, gave you a particular *Reason* why she could be so positive as to that Fact, which was, “ *that*, notwithstanding the Reconciliation between my Lord and Lady, her Father still continued uneasy about the Matter; and was very desirous and pressing, that they would leave his House, and go to other Lodgings, because he thought it would have a better Air of their being well together,” which she explain'd afterwards, by saying, that *it would become more publick and notorious to Mankind, that my Lord and Lady were in Fact reconciled.*

This Circumstance, as soon as it was mentioned, I thought, struck some Light into this Affair—it did to me explain clearly *two other* odd Circumstances, which I shall mention to you presently.

The next Fact, concerning which Mrs. *Cole* and Mrs. *Heath* stand in direct Opposition, is, the supposed *Miscarriage* at *Dunmaine*. Mrs. *Cole* swears positively, that about the Middle of the Night, after the Accident of Lord *Altham's* breaking the Saucers, Mrs. *Heath* came into the Bed-chamber of her Mother, Mrs. *Briscoe*, with whom she lay, alarmed her with an Account of my Lady's being extremely ill, and begged that she would immediately rise and go to her, which her Mother accordingly did; that the next Morning she (the Witness) was in my Lady's Bed-chamber, where were present her Mother, Mrs. *Heath*, and several of the Servants—that her Mother there told her, that my Lady had miscarried, and *shewed her the Abortion* in the Basin.

Mrs. *Heath*, on the contrary swears as positively, that she did *not*, either upon that or any other Night, call up Mrs. *Briscoe*—that she does not remember, that Mrs.

Briscoe,

Briscoe, or her Daughter, was in my Lady's Room the next Morning—and she swears positively that my Lady did not then *miscarry*, nay, that she was not, either *then*, or at *any other Time*, with Child.

It was insisted on strongly by the *Defendant's* Counsel, that this Evidence of *Cole* was attended with great *Improbability*—that it was incredibly *strange*, that a Mother should shew an *Abortion* to her Female Child of such tender Years. And, indeed, Gentlemen, I think *that* Fact does, *prima facie*, appear to be extremely odd, and to carry with it a strong Air of Improbability.

There was *another* Fact, proved in the very Outset of the Cause, which (though it had not the same Remark made upon it by the Counsel, struck me in a very odd Light, and that was, that upon the Reconciliation of Lord and Lady *Altham*, at Captain *Briscoe's*, Mrs. *Dorothy Briscoe*, then not above Ten, and her Sister, Mrs. *Cole*, not then above twelve Years of Age, were, with the rest of the Family, called into the Room, to see my Lord and Lady in Bed together.

But Gentlemen, you will consider, whether the Reason which Mrs. *Cole* tells you her Father had for pressing Lord and Lady *Altham* to leave *his* House, and lodge elsewhere in *Dublin*, viz. that their Reconciliation might become *more notorious to Mankind*, does not fully explain, and strongly corroborate the Proof of, those two odd, and otherwise unaccountable, Facts.

Gentlemen, you will consider further, whether from these *three* Circumstances connected and compared together, there does not arise a strong Probability, that Captain *Briscoe* (who I think appears to have been the Person employed by the Duke of *Buckingham* to bring about the Reconciliation) had some *Apprehensions*, that although the Reconciliation was affected, and although, in Consequence of it Lady *Altham* should have Issue by my Lord—yet, that in some future Time, and for some Reasons or other, Lord *Altham* (whose Character and Conduct appear pretty extraordinary upon the Evidence in this Cause) might be induced to bastardize that Issue.

And, Gentlemen, you will consider further, whether such an Apprehension in *Briscoe*, as I have supposed would have been *unnatural* or ill founded, when you have compared *these* Circumstances (which, as I have mentioned, seem to render it probable, that he *had* such an Apprehension) with the Evidence of *Palliser* the younger. He relates to you a very extraordinary Conversation which passed between my Lord and him, about five Days before the Separation, as they were returning from *Bourkstown* to *Dunmaine*. He tells you, that my Lord called to him in a familiar Manner, and said, “*Tom, I will tell you a Secret, as I have no Son by my Wife, nor ever expect to have any, and as my Lord Anglesey is very angry with me for keeping this Woman—I am determined to put her away, not to disoblige my Lord Anglesey.*” The same Witness had before sworn positively that he never *had*—that he never *attempted* to have—that he believes in his Conscience, that my Lord *did not suspect* he had—any Criminal Commerce with Lady *Altham*; and that my Lord only made use of him as a *Colour* and Pretence for putting away his Lady.

Now, Gentlemen, you will observe, that upon this Testimony even of the *Defendant's* Witness (who, indeed, is a very material Witness for the *Defendant* in some other Parts of his Evidence, if you give Credit to him) Lord *Altham* was a Man capable of putting away his *lawful Wife*—to whom he had *lately* been *reconciled*—upon a mere *Pretence*—and for no other *real* Cause than that he might *not disoblige* Lord *Anglesey*:—If he were so, you will then consider, whether it be at all an *unnatural* and strain'd Supposition, that he was capable of abandoning, and *bastardizing* his *lawful Son*, in order to *oblige* some other *Person* or *Persons*.

This Supposition, Gentlemen, will, I think, appear *still less unnatural*, when you recollect how Miss *Gregory's* Behaviour to the Boy stands upon the Testimony of another Witness for the *Defendant*: I mean *Herd* (who, in his Account of the Boy's Treatment by my Lord before they came to *Dublin*, differs totally, as my Lord *Chief Baron* hath already observed, from all the Gentlemen of

of that Part of the Country, who have been produced before you.)

Herd tells you, that when my Lord lived in *Frappier's Lane*, great Complaints were made to my Lord against the Child, by Miss *Gregory*, of his *Thieving*—that he cannot tell whether the Boy was really guilty or not, but that he *confessed* himself so—and that upon this my Lord (whom the Witness had *never once* seen *strike* the Child upon any Occasion in the Country) corrected him *more severely than ever he had seen any Child corrected in his Life*.

When the Witness was asked by my Lord *Chief Baron*, what those Things were, with the *Thieving* of which this Boy (who is admitted on all Hands, to be the Son of my Lord, though his *Legitimacy* is disputed) was charged by *this Lady*, and for which he was so *cruelly corrected* by his *Father*, he tells you they were “A
“ JOCKEY BELT and a PAIR of PIDGEONS.”

These are Circumstances which I must own, strike my Understanding strongly: You, Gentlemen, are the Judges, and you will well consider, what Weight they carry, when connected with the rest of the Evidence; and what Light may be collected from them to guide your Judgments on this Occasion.

I forgot to mention to you one Thing which I think is very remarkable upon *Heath's* Evidence, and that is, that she accompanies some of the *Plaintiff's* Witnesses in all the preparatory Steps, and separates from them only, when they come to the critical and material Facts themselves.

She recollects distinctly with *M^c Cormick*, *Vice's* Servant, “that my Lord came Home late one Night disordered with Liquor—that he made a great Noise with
“ the Chair—that he quarrelled with her—that he jumped
“ out of Bed, from my Lady, and ran towards the
“ Window—that he called for Mrs. *Lucas* the Midwife
“ —swore he would send for her to see if my Lady was
“ with Child, and with another Oath declared, that if
“ she was not with Child, he would turn her away.”
All these Circumstances she recollects minutely, and exactly agrees in them with the other Witness—but as to
my

my Lady's *Screaming* upon this Occasion—there she separates.—She says, *my Lady would have died first*. As to her *Miscarrying*, or to any *Discourse* in the Family the next Day that she *had Miscarried*—this she positively denies.

With Regard to the Miscarriage at *Dunmaine*—she agrees with *Cole* the Fact of my Lord *breaking the Saucers*, that those *Saucers had ugly or indecent Figures on them*, and that *my Lord had forbid them being brought to Table*—But, that my Lady was the least *disordered* upon this Occasion—she denies—that she called up Mrs. *Briscoe*—that my Lady *Miscarried*—that she *kept her Chamber* for several Days, or even *one Day* after—all this she positively denies, in direct Contradiction to what has been sworn by *Cole*. And here, Gentlemen, it will be extremely material for you to recollect that, pretty exactly to the Time at which *Cole* swears this Miscarriage happened, and my Lady kept her Chamber at least five Days, it appears from the Evidence of the *Defendant's* Witnesses (Mr. *Aaron Lambert*) that *Sutton* the Surgeon, whom my Lord brought over with him from *England*, but had turned out of his House, on Account of some Misbehaviour which he had been guilty of in the Family, was *twice* sent for to *Dunmaine*; that he twice refused to go, being picqued at his having been turned out of the Family—that being sent for a *third Time*, and my Lord's Chariot coming for him, he *went*, and *continued attending my Lady* at *Dunmaine*, to the best of the Witness's Remembrance *for a Fortnight*. This Evidence was produced in order to discredit *Brookes* the *Peice of a Surgeon* (as he called himself) produced on the Part of the *Plaintiff*, who in my Opinion sufficiently discredited himself. You will consider, Gentlemen, whether it does not go strongly in Support of the Testimony of Mrs. *Cole*, in Contradiction and Discredit of *Heath*; with Regard to whom, an Observation was made by the *Defendant's* Counsel, which I was exceedingly surprized to hear from that Side of the Table. They took notice of the peculiar Excellency of our Law, especially with Regard to Trials by Jury, on which Occasions the Witnesses are examined *viva voce*; that from confronting Witnesses who contradict each other,

other, and carefully observing their *Appearance* and the *Manner* in which they give their Testimony, some Light is to be collected; and the Court and Jury may in some Measure be enabled to form a Judgment upon a doubtful Case.

The Observation, Gentlemen, is undoubtedly just, but what I little expected to have heard from that Quarter—For, Gentlemen, when you recollect and compare together the *outrageous Behaviour* and *vociferous Asseverations* of *Heath*, with the *calm, sedate, and modest Demeanour* of *Cole*—You will consider whether all the Weight which can be laid upon an Observation of that Sort does not lie entirely on the other Side.

Another Point which hath been strongly, and indeed very properly insisted upon by the *Defendant's* Counsel, is this:—They say it is extremely *improbable*, if this Person were really the Son of *Lady Altham*, that my Lady, who is proved to have lived *two Years* after the Death of her Lord, should make no Enquiry about him.

But, Gentlemen, if you will compare the Time of *Lord Altham's* Death with the Time of *Kidnapping*, the Boy, you will find, I think, that there is very little, if any, Weight in this Observation.

Lord Altham died in *November, 1727*—the Letter which *Mr Mullen* swears she sent to *Mrs. Heath*, notifying my Lord's Death, (and which *Heath* swears she communicated to my Lady) bears Date the 18th of that Month— that Letter must be some Days at least going to *England*—On the 26th of the *March* following, the Boy appears from the *Tholsel* Book to be indented to *Thomas Hendry* by the Name of *James Hensly*, and on the 30th of *April*, the next Month, it appears from *Stevenson's* Book, that he passed over the Bar of *Dublin*—So that taking that to be Truth, which, I think, is liable to strong Objections of *Improbability* (that *Mr Cullen* sent that Letter) there will be *very little more than five Months* between *Lord Altham's* Death, and the Transportation of the Boy.

When *Alice Bates* appears, and gives you an Account of her *joking* with *Lady Altham* about her *being with Child*, you are told by the *Defendant's* Counsel, that this is highly

improbable—That Lady *Altham* was a very *haughty* Woman—That it is *incredible* she should condescend to such *Familiarity* with a Person so much her Inferior.

Will it not appear to you *equally improbable at least*, that this *haughty* Lady should condescend to receive *Visits* once a *Week*, as *M^c Mullen* tells you she did, from *her*—the Daughter of an *Ale-House Keeper*.

It must be allowed that my Lady's living with Alderman *King* for thirteen or fourteen Months, conversing with him about her *Family Affairs*, and yet never mentioning to him her *Son*, does *primâ facie* carry with it a great Improbability of her having at that Time a lawful Son.

But considering that my Lord had put her away upon a *Suspicion* (either real or pretended) of her *Virtue*; and had aspersed her Character, it might not be so prudent, nor perhaps so *probable*, that she should discourse with him, or any other Person, upon the Subject of *Child-bearing*.

However, allowing this to be improbable—will it not be equally improbable, that the Care of communicating so material Intelligence as the Death of Lord *Altham*, should be intrusted, not to this Alderman *King*, or any other Person of some tolerable Figure in this Town, but to such a Woman as *M^c Mullen*?

These, Gentlemen, are Circumstances which in my Apprehension weigh strongly against the Credit of *M^c Mullen's* Evidence. But taking that Evidence to be true, you will consider, whether the small distance of Time between Lord *Altham's* Death and the Transportation, does not greatly lessen the Force of this Argument, which has been so strongly insisted upon by the Defendant's Counsel,—especially if you add to it, the Circumstances both of *Health* and *Fortune*, in which Lady *Altham* appears to have been at this Time.

And here, Gentlemen, will come in very materially for your Consideration the Evidence of Mrs. *Deborah Annesley*, a near Relation of this noble Family.

She who had before told you that her Brother frequently visited my Lord at *Kinnae*—that whenever he returned from thence, and whenever my Lord visited at their
House

House, it was their common Practice to drink the Health of my *Lord's Son*—that they all considered that Boy as my Lord's *lawful Son*, and the future Earl of *Anglesey* (so that it is not Fact, as you have been told, that none of the Relations of the Family ever heard of Lady *Altham's* having a Son) this Lady, I say, tells you, that upon the Death of Lord *Altham* she and her Sister made frequent Enquiries after *this Boy*: That for some time they could learn *no Account* of him, and at last they concluded that *he was dead*. Now if it became a general Reputation that he was so, then Gentlemen, tho' Lady *Altham* likewise might have made frequent Enquiries after this Boy (*non constat* upon the Evidence whether she did or not, and she might have made several, not at this Day capable of Proof) and might receive an Account, and give Credit to it, that he *was dead*; and this might put a stop to any further Enquiry, consistently with Lady *Altham's* Knowledge of this Boy's being her legitimate Son.

These Parts of the Case, independent of the other, which have all been fully laid before you by my Lord *Chief Baron*, seem to me to have great Weight in them.

You, Gentlemen, will consider what Stress you will lay upon the Observations I have thrown out to you, and what Light may be collected from them.

There were several other things, Gentlemen, which I designed to have mentioned to you, but the Fatigue which we have all undergone, hath been so very great, and the Time I have had for Recollection so very short, that my Thoughts are too much dissipated to proceed, and indeed I have already trespassed too much upon your Patience; considering the great Attention which you have all along given, and the careful Notes you have taken of the Evidence; I shall therefore now conclude with that which I at first set out with, the *Kidnapping* and the *Prosecution*. If the Case be doubtful, upon the other Parts of the Evidence (whether it be or not you are the proper Judges) I must then leave it to your Consideration, whether the Evidence of those two extraordinary Facts may not be sufficient to determine you what Verdict to give upon this Occasion.

Mr.

Mr. Baron Dawson. *Gentlemen of the Jury*, my Lord Chief Baron, and my Brother Mountney have summed up the Evidence, and observed upon it in so judicious and clear a Manner, as makes any further Observations from me unnecessary; I shall therefore only require your Patience for a few Minutes, to shew you how I would consider this Case if I was upon the Jury, and my Reasons for so doing. There are such Contradictions on both Sides of the Question, that it would not be hard to shew that several Witnesses on each Side are not entirely to be credited. Several of the Witnesses on each Side, not only contradict the Witnesses on the other Side, but also, in some Instances, themselves, and therefore, independent of other Things proper to be consider'd, one could not tell where to settle. If I was upon the Jury, and to determine this Question, I should lay before me and consider the Story as told on each Side; I should consider how far the Story on one Hand, independent of the Witnesses, exceeded the other in Point of Probability; if on either Hand the Story told appeared extremely improbable, I should then require from that Side, the strongest Proof imaginable; and that because Probability ought to weigh, except it be contradicted by Testimony not to be doubted of: And therefore, if on either Side, the Story should be extremely improbable, and probable on the other Side, I should give my Opinion on the Side of Probability. How far any Thing of this Kind, appears in this Case will come under your Consideration.

This is the longest Trial ever known at the Bar, this is the 15th Day since the Trial began; Trials at Bar are usually determined in one Day, and the Policy of the Law hath taken Care that no Person should speak to the Jury after any Evidence given in Court; there is no Occasion, I'm persuaded, *Gentlemen*, to remind you that any thing heard out of Court is not to govern you, you are to be govern'd by nothing but the Evidence laid before you.

In the first Place, the first Stage is the Time of the Birth. You will take into your Consideration the Number of Witnesses and their Stations that swear to that Birth, and also the Number and Station of the Witnesses
that

that swear in direct Contradiction to them; if you can't determine that Question by comparing them together, you will then have recourse to the other Part of the Testimony, which is, the Reputation of the Country, and the Persons that visited constantly at that House; you will consider the Probability or Improbability that a Fact of this kind could have happen'd, and the People visiting not know of it. This could hardly be in a Family of less Consequence than my Lord *Altham's*, but when you consider this Family and the Estate that was to fall to it, you will consider if there could be a *Birth*, and Persons visiting the Family not knowing of it. There have been Proofs on the one hand, laid before you of my Lady's being with Child, and on the other hand of her not being with Child; either of these Parties may swear false; but then you must take into your Consideration, if they that swear she had a Child swear Truth, whether it could be possible that that could be kept a Secret. There was not any Interest or Reason that it should be kept a Secret. If it was not industriously kept secret, how comes it that all those Persons that visited there should never have heard of a Child?

To go to positive Testimony, *Laffan* swears positively the Child was presented to several Gentlemen and Ladies, and often to Mrs. *Lambert*. Mrs. *Lambert* swears positively the Child never was shewn to her? Which is to be credited? There are several Circumstances you will take into your Consideration, concerning the Probability or Improbability of the *Birth* of this Child, whether the Preparations for my Lady's Lying-in were suitable to her Rank? Whether *Dunmaine*, a small Village, distant from any Assistance necessary on such an Occasion, was a proper Place? Whether my Lady *Altham* would be easily brought to Lye-in in the Country, especially of her first Child? These are Considerations worthy your Attention. There have been many Gentlemen who gave Evidence to there not having been a Child; they swear not only that they never saw, but that they never heard of a Child. I won't enter critically into every particular Period of Time sworn to by them; but if in three Years those Persons were three

or four times a-piece at *Dunmaine*, and they swear Truth, it will be of Weight in the Question whether there was a Child or not. For admitting Colonel *Palliser* and the other Witnesses to be there four times a Year, you are the Judges whether it is probable that there was a Child there, and unknown to them. The Separation is agreed on all Hands to have been in the Year 1716, and from some little Time after that the Child was brought home to my Lord *Altham's* House. *Dyer* swears the Child was not brought to *Dunmaine* in his Time; but the Witnesses for the *Plaintiff* say, either from the Separation, or soon after, and that the Child continued in the House with Lord *Altham* till about the Year 1724. You are to observe that my Lord left *Dunmaine* about Summer 1717; the Separation was in February 1716-17, and Lord *Altham* came up to Parliament, and after that went to *Kinnea*; the *Parliament* sat down the 27th of August 1717; then you will consider what has been sworn to of my Lord's Behaviour to this Child all that Time. During this Period of Time at *Kinnea*, *Carrickduffe*, *Cross-Lane* and *Frappier-Lane*, there are many Witnesses on both Sides, that give a most contrary Testimony to one another, there are Witnesses on both Sides that I can't say how to disbelieve, there are many of them that I cannot disbelieve, who swear to his being treated as a *legitimate* Son; there are many of them whom I also cannot disbelieve who give a contrary Testimony, and say that he was treated as as an *illegitimate* Son, and Colonel *Harman*, Doctor *Medlicott* and Colonel *Wall* give an Account of my Lord's manner of calling him his *bastard* Son. And in my Apprehension, if the Witnesses deserve Credit, my Lord *Altham* did during that Time treat him to some Persons as his lawful Son, and to others, as his *Illegitimate*. You will consider the Temper and Disposition of Lord *Altham*, and the Circumstances he was in; he was a Man not of Prudence either as to the Management of his Fortune or Family; you will please to consider in what manner to account for this Behaviour of his, whether there may, or may not, be any Reason for treating an *illegitimate* Son in some Companies as a *legitimate* Son, and whether there may be, at any Time,

Time, any Reason for treating a legitimate as an illegitimate one. A Man comes into the Country where he was not known before, and has a Child that he had not by his Wife; perhaps he may have Reason for treating him as a legitimate Son. A Man may carry an illegitimate Child abroad, and visit with him in the Neighbourhood, and pass him for his legitimate Child; for perhaps he might be glad that that Person whom he visited, should not know him to be a *Bastard*; but a Man can have no Reason, in my Apprehension, for treating a lawful Son as an unlawful one. Then you will consider the several Schools the Child was put to by Lord *Altham*; you will consider whether these Schools were fit Schools for my Lord, even in indigent Circumstances, to put his lawful Son to. You will consider the Consequence of my Lord's being under the Influence of Miss *Gregory*; the Consequence was, that this unhappy Child was thrown abandoned to the World at not ten Years old; here you will consider whether a Treatment of that Kind bespeaks him to be his legitimate or illegitimate Son: Had he been a legitimate Son, surely my Lord *Altham* must have had Reflection enough to have considered what a dishonourable Action he was doing publickly. On the other hand, you will consider that the Influence of Miss *Gregory* might well be carried to make him doubt whether this Child was his or not, if the Child was by an improper Woman. In the next Place, you will consider the Situation and Behaviour of the Mother, that is the tender Sex, and their Tenderness to their Children is hardly to be got the better of at any Rate. Lady *Altham* was three Years in *Ross*, and there is but one Testimony of her seeing him then, and that is the Man that swears he made him Shoes. From this she comes to *Dublin*, and lives near my Lord at the Time this Child is with him; it seems a little odd that she made no Attempt to have this Child brought to her but by *Catharine O Neile*; and I submit it to you how far what she says can have Weight? for she says that my Lady declar'd she would be glad to see the Child, but she was afraid the Servant that brought him would lose his Bread. Can such

a thing

a thing as that be put in Competition with the Tenderneſs of a Mother for a Child? That, Gentlemen, is for your Conſideration. Why then, Gentlemen, my Lady comes to the Houſe of Alderman *King*, and he tells you that for thirteen or fourteen Months ſhe frequently ſpoke to him of her Family Affairs, yet never mentions ſhe had a Child. It ſeems very ſtrange; a Woman, where ſhe fancies herſelf injured, is mighty apt to tell the Injuries done her to every body, and to aggravate her Diſtreſs by ſaying ſhe was deprived of the Comfort of ſeeing her Child. This was not to be entrusted to Alderman *King*, but communicated to Mrs. *Hodgers*, whom ſhe had never ſeen but once; you will conſider this, Gentlemen. In the Year 1727 my Lord died, and there can be no doubt but my Lady knew it; there is not any Proof of her having made any Enquiry after the Child: It is true, my Lady might have made the Enquiry after the Child, and it have proved ineffectual, becauſe of his being transported ſo ſoon after; but of this there is no Evidence; but how comes it ſhe did not make the Enquiry, eſpecially where her own Intereſt was to guide her in that Caſe; and yet here is the Force of the Mother and Intereſt joined together, and they work nothing on my Lady *Altham*. You will conſider that the Eſtate of this Family, on Failure of Iſſue, being to go to *Arthur*, late Lord *Angleſey*, it was the Intereſt of the Mother to have made a ſtrict Enquiry after him; and yet there is a Witneſs for the Defendant, *William Napper*, who tells you that he had a Letter of Attorney from Lord *Angleſey*, to take Poſſeſſion of the *Rofs* Eſtate; and by Virtue thereof made Numbers of *Minutes* to ſeveral Tenants, and no Objection he ever heard made that Lord *Altham* ever had a Son. That, Gentlemen, ſeems a little extraordinary.

The next Thing that offers, and the Strength of the Caſe for the Plaintiff is, the Transportation of him, and the Directions he gave to Mr. *Giffard* for the Proſecution of him after his Return into *England*. You will conſider, as to the Transportation, whether the Defendant was the Occaſion of it, or not? If you ſhould be of Opinion he was, you will conſider how far that will have

have an Effect upon you. He claimed to be the *lawful* Son of Lord *Altham*; you will consider whether that might have been an Inducement. If you should be of Opinion that the Story on each Hand carries an equal Degree of Probability, this of the Transportation should, in my Apprehension add great Weight to the Case of the Plaintiff; if on the other hand, you should not think them equally probable, you will consider how far the Transportation will make you give Credit to a Fact you should otherwise think improbable. The same may be said in respect of the Attempt in *England*, in relation to the Prosecution of him there. I have mentioned before that several of the Witnesses on both Sides can't be very well depended upon; and therefore I think the Probability or Improbability of the Thing may be of great Weight in determining the present Question.

Then the Jury withdrew, and in about half an Hour brought in their Verdict for the PLAINTIFF.



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